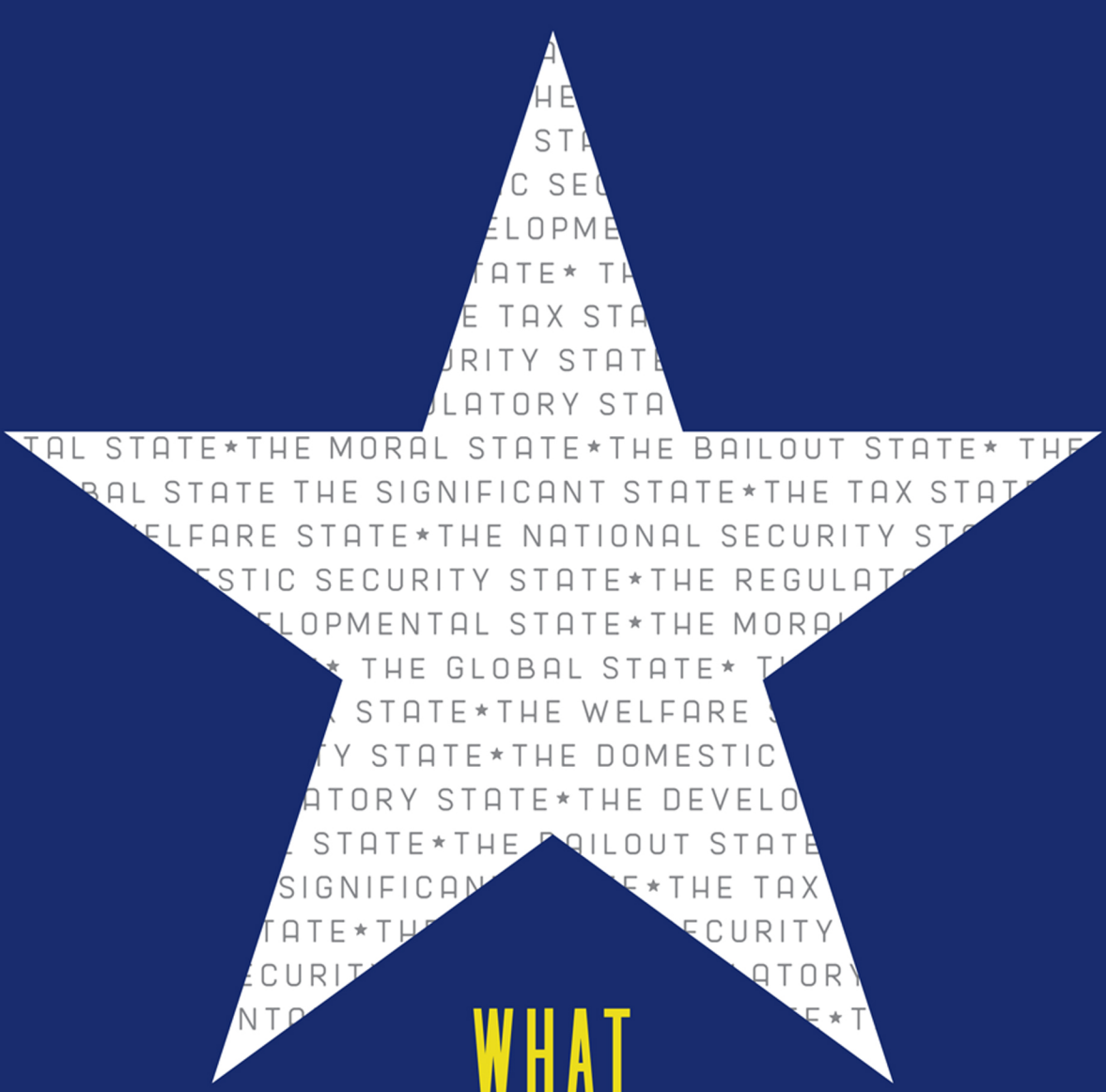

WHAT AMERICAN GOVERNMENT DOES

STAN LUGER AND BRIAN WADDELL

VISIT…

What American Government Does

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WHAT AMERICAN GOVERNMENT DOES

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CHAPTER ONE

Introduction

During the fall of 2008, as Wall Street appeared to be teetering on the brink of collapse and fears of another Great Depression hung in the air, policy makers in Washington, DC, rushed to stabilize the American economy. Virtually overnight, three-quarters of a trillion dollars was allocated by Congress to bail out large banks and some of the largest investment houses on Wall Street. Meanwhile, the federal government instituted other measures to take over the housing market, propping up virtually every mortgage. As automobile industry sales plummeted, due to the collapse of credit and the spike in oil prices, the unthinkable happened: General Motors, long the largest corporation in the world, was saved from collapse and became a ward of the federal government. The scale and swiftness of these actions stunned observers. When the dust had settled, trillions of dollars—some estimates run as high as $29 trillion—had been committed by Congress, the Federal Reserve, and other federal agencies to stabilize the US and the global economy. Moreover, all of this occurred while the United States was simultaneously fighting two wars.

One is hard-pressed to think of a more striking set of events that demonstrate the power, scale, and significance of the US government. Whether one agrees with these actions or not, it seems perplexing that so many Americans assume their government is incompetent and ineffective. We have written this book to present a realist, or practical, alternative to the common ideologically driven arguments that denigrate the federal government's contribution to America's success as a nation. This book is not about celebrating everything government does. Rather, it presents an analysis of the current functions of government and how they have emerged over time. The analysis is both institutional and historical, as we examine how the functions developed over the course of the twentieth century and beyond. In this examination, we are careful to identify the controversies related to the operations of these various parts of the government.

We approach this subject aware of the degree to which Americans have an ambivalent relationship with their government today. It seems that discontent with government has been growing for decades, and our elections increasingly center squarely on the role of government in Americans' lives. Anti-government attitudes are expressed freely and seemingly widely, especially by the Republican

Party, one of the two major political parties that exercise governmental power. The Republicans' 2016 presidential nominee, political neophyte Donald Trump, defeated many seasoned and well-known candidates by claiming that, as career politicians working in the government, they were part of the problem itself. Another career politician, proud Socialist Bernie Sanders, came close to capturing the Democratic nomination by defending important parts of what government does for the broad majority of Americans and by arguing that the political system has been hijacked by powerful, wealthy individuals and corporations. Whether their insurgent campaigns have changed the simplistic anti-government narrative that has come to dominate American politics remains to be seen, though it would seem difficult to upend and reverse decades of dominant anti-government ideology in a single election season, especially since Republican nominee Donald Trump more often than not toed the anti-government Republican line.

Our book is organized as follows: This introductory chapter presents a theoretical introduction designed to outline why governments emerged and why they gained the responsibilities they did. The role of government has become controversial, because fewer Americans understand what the government actually does, or they lump together very different parts of the government. This chapter seeks to address the confusion about government by outlining what the government does, and why. It also examines the exercise of power in the United States and situates government within a business/government division of labor in which government is not the only institution that exercises power—indeed, the controversy over what government does exists in large part because of the competition between business and government. Chapter two provides a wide-ranging historical overview designed to help us understand when and why the various governmental functions emerged, and to establish the importance of government to America's success. The topical chapters are divided into the following categories: the tax state, welfare state, national security state, domestic security state, regulatory state, developmental state, moral state, bailout state, and global state. Each topical chapter can be read in sequence, or readers can focus on the parts of government they are most interested in. A concluding chapter sums up our thinking on current debates over the government's controversial role.

The Controversy over Government

Taxing, spending, policing, regulating, distributing benefits through a welfare state, monitoring citizen communications, and waging wars. These are a few of the things that government does, and most of these activities are controversial for one reason or another. Words and phrases like *bureaucrat*, *regulation*,

tax and spend, *red tape*, and *welfare* are spat out as offensive insults, meant to evoke negative emotional responses to a supposedly distant, imperious, and overbearing government, one that, unlike the free market, rewards indolence and waste.

At the same time, Americans are offered the alternative of the seemingly natural operations of a "free" market that evokes liberty, free choice, the absence of coercion, and the maximization of freedom for all. Many prominent conservative commentators today, even after the 2008 Wall Street collapse, continue to argue that free markets are better off left alone and that most government interventions simply poison the free market goose that would lay the golden eggs of economic growth. In 2013, George Will, one of the many champions of this view, even referred to the "spontaneous order of a market society" to denigrate the idea that government is much needed at all.[1] A freely operating and naturally self-correcting market, the argument goes, is all that is necessary to organize our society and our lives. And free markets are freestanding, fully formed entities, independent of any government action, that operate ever more perfectly the less government interferes with their operation. Onerous government dictates only intrude on a natural order governed by market forces and distort natural markets.

Everyone has heard the statement that "government is best that governs least" (attributed to Thomas Jefferson, though he never said this), and modern conservatism was built on President Ronald Reagan's statement that "government is not the solution to our problem, government is the problem."* Even Democratic President Bill Clinton, faced with Republican gains in the 1994 midterm elections, famously stated that "the era of big government is over." All of these statements, taken at face value, are false, simplistic, and far too ideologically narrow to capture the realities of governmental functions and the role of government in the lives of Americans. To understand the developing roles and functions of government requires a more realistic assessment of what government does and of the necessary interactions between the government and its counterparts, the nation's society and economy.

By focusing so much only on the benefits of the market side of the equation and ignoring any of the real benefits of the governmental side, conservative critics have developed a distorted sense of American government and an inability to appreciate the government's contribution to America's strength as a nation. As *New York Times* business page columnist Eduardo Porter recently

* Reagan's statement, "government is not the solution to our problem, government is the problem" was actually prefaced by the words "in this present crisis," and he followed up this statement with: "Now, so there will be no misunderstanding, it is not my intention to do away with government. It is, rather, to make it work—work with us, not over us; to stand by our side, not ride on our back" (www.presidency.ucsb.edu/ws/?pid=43130).

noted, since these critics are "reflexive opponents of the 'government', they can exhibit little sense of *what the government actually does*" (emphasis added).[2] This simplistic anti-government sensibility has become all too pervasive and has led to a decreasing awareness and appreciation for what the government actually does, sentiments that we hope to counter in this book.

We start from a realist and practical (versus an ideological) position that government is not some contingent or provisional factor in our lives that can be easily reduced or even eliminated. It is realist in acknowledging the necessary and permanent role of government and in understanding what government does in terms of the broader exercise of power in America. It is practical in terms of its direct assessment and analysis of the functions of government. Simply put, government is a necessary feature in complex modern societies. We review here why this is so, and introduce the reader to government's many different functions. We understand that government is controversial, because of the enormous power government officials have at their disposal. We see the need to more fully appreciate what government does, and why, precisely to counter the simplistic anti-government attitudes expressed so freely today.

We begin this examination by considering what a realist and practical view of government entails, including an overview of the general types of authority governments developed over time, and of how government power needs to be considered in terms of the larger power relations in our society. We review why states and governments exist, and the how and why of some of the government's basic functions—especially its security and economic support functions—that developed over time. As governments emerged, they first fought to secure centralized military control of a given territory (our own revolution was fought to wrest control of the colonies from England, and this required a working government and an army). Then most governments sought to develop their national economy—a key determinant of national power—which required a different orientation and the development of new capabilities and functions. We explore how and why the role of government grew during the modern era. We consider the larger context within which government exercises power, since government is not the only institutional force doing so. To understand this context, we assess the division of labor between government and the business system, and the differences and conflicts between public and private power (i.e., private class, or economic, power).[†]

[†] Private power can refer to power based on race, class, gender, or even sexual identity. But while we now have fairly open and thorough discussions concerning most of these power relations, political science especially has still found it uncomfortable to have a full discussion of private class, or economic, power, which is what we mean by the term *private power* here.

In the next chapter, we look at the development of American government, beginning with the surprising strengths of nineteenth-century government, as a way of countering the myth of laissez-faire, that is, the myth that America developed a strong economy without much government intervention to aid the process. We dispel the commonly held notion that the United States traditionally—that is, before the national government's explosive growth during the New Deal—enjoyed a minimal governing apparatus that basically left people alone to enjoy their freedom, unmolested by governmental regulations. We then examine the stages or periods of the growing national government, to see how governmental growth emerged in response to demands by different elements of American society. We show that the United States followed the path of many other successful states in shaping a capable military to secure their security and stability, and in intervening continuously to develop the national economy.

We examine a broad array of government responsibilities to argue that the American state has been far more significant and necessary than commonly depicted. And we are not alone in making this argument. Recent scholarship has sought to reconceptualize the development of the American state to correct for earlier scholarly accounts contending that the United States had a limited—indeed, an exceptionally limited—government. Historian William J. Novak, for example, sums up this newer understanding in the title of his seminal article, "The Myth of the 'Weak' American State."[3]

We follow this new scholarship in seeking to highlight and examine the significance of the American state. We examine the many ways that government contributed to America's strength as a nation, while also presenting the controversies attending the government's central functions. We divide these functions into chapters examining the various aspects of the state. In each chapter, we develop a historical-institutional narrative linking the establishment and evolution of government institutions and policies to the particular problems that government officials faced over time. We approach each of these functions independently, to comprehend their distinct origins and development. Analyzing such a broad array of state functions in this way is essential for presenting a more comprehensive account of the US government and for understanding what government actually does.

It is difficult to escape the fact that when we study any successful nation worldwide, we find a strong government. Acknowledging the necessity and inevitability of a strong government provides a starting point for our examination. This book is about coming to grips with what government does and how American government developed to attain its present responsibilities.

The Different Functions of Government

CHARLES TILLY

In tracing the origins of the nation-state, Charles Tilly argues that governments had to develop certain capabilities or functions fairly quickly if they were to survive. These basic capabilities are what Tilly calls extractive and repressive functions of government. Successful governments around the world today all retain these capabilities, without which they would cease to exist.

Governments developed an army to defend their territory and a policing agency to maintain order within that territory, and these bodies perform the *repressive* functions of the state. Stability, order, and protection are the most fundamental goals of any government—scholars speak of "failed" states in those cases where no central order is maintained. To support the army and police, revenue must be obtained from the existing society in the form of taxes, hence the *extractive* function. As Tilly notes, these two functions "became important early in the state-making experience and remained so for a long time."[4] The very act of building an effective military apparatus—which required extracting taxes and imposing conscription upon an often reluctant population—created the conditions for a successful state. As Tilly puts it, "War made the state, and the state made war."[5]

To make war, states had to raise money and draft soldiers, and the resulting military and policing machinery became the very instrument through which to gain more taxes and conscripts.[6] To create and support this army and police, and to rationally organize the collection of taxes, the government had to develop and maintain some kind of separate formal organization that would become, in time, a bureaucratic apparatus with a separate class of professional government officials. These basic functions of a modern government—a repressive apparatus of army and police and a supporting base of taxation and some measure of bureaucracy—form the sine qua non of any modern government. Any successful government in the world has to have these agencies to perform these functions, or they will cease to exist. So the military, the police, and taxation, with a supportive bureaucracy, are the oldest and most essential government functions. In the United States, we find them in what we delineate as the national security state, the domestic security state, and the tax state. Each is covered in a separate chapter.

Governments continued to develop these basic functions because of both external and internal opposition. Other neighboring states posed a continual external threat as they developed their own capabilities. The very competition between states, including military competition, spurred on the development of state strength. In turn, the internal population resisted the imposition and enforcement of government's demands for taxes and for young men to serve in

their growing armies. This resistance finds expression today in views that envision the relation of the state to society (i.e., the relation of the government to its citizens) as a zero-sum game in which every gain in power for the government means an equivalent loss of power for the citizenry. As we will see, while this equation is sometimes true for early modern states, it is too simplistic for modern democratic governments in which citizens have both a direct stake in government programs and the right to select their leaders.

If governments continued to develop in this way only—that is, just developing their repressive authority over their own citizenry—we might find governments over time slowly but surely decreasing societal freedom in such a zero-sum manner. But, as Tilly reports, modern European governments found it difficult to push too hard in imposing unilateral control over their societies: "Extreme stateness . . . neither guarantees political stability nor assures power in the international arena," since "the short-run cost is an increase in the likelihood of resistance and revolt."[7] Governments thus cultivated allies within society to increase their powers, and early on, these allies were usually powerful "major segments of the landed elite."[8] In this way, government and economy developed alongside each other as capitalism replaced feudalism. As Tilly explains, "Later on a powerful reciprocal relationship between the expansion of capitalism and the growth of state power developed, despite the frequent efforts of capitalists themselves to fight off state power."[9] Right from the beginning, then, state and society developed alongside, and in a reciprocal relationship to, each other.

KARL POLANYI

Another basic function of government is to shape and regulate economic activity. For Karl Polanyi, the very existence of free markets came about through a "great transformation" orchestrated and guided by government itself. In England, where free markets first gained ascendency, market capitalism was itself the product of government policy. As Polanyi puts it: "The road to the free market was opened and kept open by an enormous increase in continuous, centrally organized and controlled [government] interventionism. . . . The introduction of free markets, far from doing away with the need for control, regulation, and intervention, enormously increased their range."[10] Very simply, and paradoxically, "laissez-faire was enforced by the state."[11]

Free markets do not reflect the natural order of things, nor does a system of free markets emerge spontaneously without the directive energies of government action. For Polanyi, "a belief in spontaneous progress must make us blind to the role of government in economic life."[12] Government had to use its coercive authority to bring about the regime of free markets because of the enduring

power of the preexisting traditional order, where the economy remained subordinated to the society in which it was embedded. Creating a free market system that, in itself, would become the central organizing principle for society meant subordinating society and social needs to the imperatives of sustaining a free market, or, as Polanyi understands it, "the running of society as an adjunct to the market."[13] The great transformation in the social and economic order proved both radical and starkly utopian. Human needs, community health, the sustainability of the natural world, social order—indeed, the very survivability of the larger social community—would be sacrificed for the short-term, profit-making goals of the business enterprise.[14]

To accomplish this transformation, the manufacturing classes and the owners of large properties in England pressed the government to use its powers to enforce the destruction of the traditional order. The government forcibly removed peasants from their traditional access to the common lands and transformed this land into private property. The government enforced a new Poor Law that dramatically reduced any aid for the impoverished, the indigent, and the unemployed. The government also removed traditional controls on the level of wages and prevented any interference with a purely market valuation of labor.[15] For a market economy to emerge, labor (human beings) and land (nature) had to be commercialized—that is, they had to be reduced to a commodity that could be bought and sold in the marketplace—a condition that had never previously existed. The government had to use its repressive powers to produce this remarkable transformation and continue to use its authority to enforce the new order.

The alarming part of this transformation, for Polanyi, is not only that the government is thereafter confined to rigorously maintaining the market economy—that is, to serve only that part of society that seeks profitable exploitation of labor and land—but also that this path brings with it serious "perils to [the larger] society." In practical terms, what Polanyi refers to is what is often called today the *race to the bottom*—the full sway of market competition forces competitors to continually seek to cheapen the price of labor as an input into the productive process, even to the point of exploiting child labor, or to cheapen the price of their product by any means, even if this results in environmentally destructive behavior—such as polluting rivers, lakes, or the surrounding air—or destroying the natural environment through unrestrained mining or the cutting down of forests. A self-regulating market economy, geared only to the demands of profit and loss, remains blind to the "exploitation of the physical strength of the worker, the destruction of family life, the devastation of neighborhoods, the denudation of forests, [and] the pollution of rivers."[16]

Polanyi understands that "the idea of a self-adjusting market," that is, self-regulating market forces operating outside of any governmental restraints,

"could not exist for any length of time without annihilating the human and natural substance of society."[17] Because of the resulting threats to society and the natural world, Polanyi discerns a "double movement": first, the establishment of self-regulating market forces, and then, in reaction to the veritable horrors of that regime, a movement within society to establish protective legislation designed to shelter people, their communities, and the natural environment from the destructiveness of market competition. The larger society rebelled against the new market economy out of self-protection and forced government back into the business of regulating market activity by reimposing limitations upon the market principle and reinstating regulatory controls to channel profit making into sustainable and socially acceptable limits. These protective acts today are embodied in, for example, laws mandating minimum wages, maximum hours, safe working conditions, the outlawing of child labor, and the many and various laws against pollutants. Competition is allowed, but only within specific parameters designed to protect society from the destructiveness of unbridled competition. Polanyi's framework is valuable in capturing the broad contours of how government began to develop its *regulatory* and *welfare* functions in reaction to the serious dysfunctions of the self-regulating market. And these governmental activities reflect the growing influence of democratic majorities over time as well, mirroring the connections between growing government power and expanding democratic possibilities.

Again, the point is that government has always been involved in constructing the economy, in one way or another, right from the beginning of the modern era. The self-regulating free market economy was a product of government action, as was the reaction to impose protective restrictions upon destructive market competition. This reasoning contradicts the conservative, anti-government stance that free markets emerged spontaneously, without government direction and assistance, and the argument that the government's regulatory and welfare state interventions undermine the operations of a free market. Polanyi's framework also helps us understand the natural tensions that develop between capitalism and democracy. Business elites desire and depend on the first use of government power Polanyi outlined, that of creating the very conditions for a free market. But, as we will see, these same elites fear and oppose the community's reaction against the destructiveness of market competition.

Government thus becomes involved, especially in regulatory and welfare state policies, in a tug of war between what business elites demand in terms of elaborating and extending the market principle and what the majority of the community—the economic majority—demands in terms of defending itself from that same principle. This is a tug of war in which government officials—themselves not a unified force, but divided into separate, competing institutions—are self-interested, power-maximizing actors who face an economic

majority and a business community also riven by divisions and conflicts. Hence, while Polanyi traces the outlines of what is a fundamental tension between capitalism and democracy, this tension will be more directly present in some parts of the state than in others. This underlying tension plays out differently depending on which part or function of the state we focus on.

There is no single, simple logic to what the government does. We build on Polanyi's insights in the chapters on the welfare state, developmental state, regulatory state, bailout state, and global state, just as we build on Tilly's work in the chapters on the domestic security state, national security state, and tax state. The moral state is an outlier of sorts in this regard, though it corresponds most closely to the domestic security state in the government's attempts to control beliefs and behavior. We can only capture the particular logic and development of each of these states by examining them in relative isolation from each other, despite both the ways in which they line up under either the Tilly or the Polanyi side of the equation and the general historical trends that tend to drive different kinds of state developments along similar paths.

MICHAEL MANN

To clarify the multifaceted, heterogeneous nature of governmental power, we build upon Michael Mann's concept of the "polymorphous" state and his analysis of the difference between "despotic" and "infrastructural" power. Once states had stabilized their domestic control and international security, many governments developed other kinds of functions conducive to economic growth and stability, themselves key determinants of national power. With these functions, which are related to economic development, economic regulation, and economic welfare, we are seeing an entirely different orientation of government power, one that Mann calls infrastructural.[18] Governments began as extractive-repressive entities and, for Mann, in this manner government officials separated themselves from society as a more or less despotic force exercising independent power over society.

Despotic power proved to be necessary to centralize control over a given territory and unite a population under a single authority. In using despotic power, governments imposed decisions upon society in an authoritative fashion, relatively independently of social and economic pressures. Infrastructural power, however, emerged as governments sought to build national power by developing the economy. This new emphasis required increased interaction, negotiation, and interpenetration between governments and their societies, leading, in turn, to a greater sharing of power between the state and society. Governments needed to develop and extend their control as centralized bureaucratic organizations and to control their national territory and population. As Tilly

argued, even achieving this stable control often required government officials to build relations with powerful allies in society. Building national power often meant expanding these government-society relations as well, since economic development and advancement became an important determinant of military prowess and national power. National leaders in the post-Revolutionary United States, for example, built a strong federal government precisely to set the stage for military security and national economic growth.

In this way, government and society developed together by fits and starts, with developments in one sphere influenced by and, in turn, influencing developments in the other. Interrelations and interpenetrations between government and the economy abounded. Still, as economic growth became the key determinant of national power, governmental power began diminishing relative to the private economic power that government had helped develop. When national governments focused on their military orientation, they had been, as Mann finds, "little more than revenue collectors and recruiting sergeants."[19] But governments then began to develop their civilian functions to promote economic growth and thus enhance national power, as well as to deal with national upheavals caused by capitalism's disruptive threat to domestic order and stability.

This transformation—from Tilly's expectations to Polanyi's—meant that subsequent government growth took place alongside the growth in private economic power. As a result, states and their societies, and governments and their economies, became more entangled and interconnected. An increasingly powerful government, in this regard, thus means a greater degree of state-societal interaction and increasing societal intervention into government operations. For Mann, the civilian interventionist part of government (concerned with economic development, regulation, and welfare functions, for example) is neither so despotic nor autonomous (independent) as the military, police, and taxation side of state power (though, as governments develop, even these more autonomous realms become entangled with societal forces and interests). Mann finds that the more modern civilian functions of government do not lead to greater state power over society, but rather to "a tightening state-societal relation," since "infrastructural power is a two-way street: it also enables civil society . . . to control the state."[20]

The very meaning of the state—the very coherence of the government—becomes jumbled as it continues its development. Where government was once primarily a military, policing, and taxing bureaucratic organization (exercising its repressive and extractive functions), it developed civilian functions to promote (as the developmental state) and respond to (as the welfare and regulatory states) the emergence of industrialism and capitalism. Government became "half military–half civil," what Mann refers to as a "dimorphist" state. As it developed more functions—continuing to become more complex as its

responsibilities increased—government became what Mann calls "polymorphist," or multisided. As Mann therefore concludes, to really "understand states and appreciate their causal impact on societies, we must specify their institutional peculiarities." He argues that through a "functional approach"—explaining government in terms of its actual functions—"maybe we can simplify multiple institutions in terms of the underlying functions undertaken by particular states."[21] While we do not follow Mann's polymorphist approach exactly, we do borrow his view that to understand a government as complex as America's, we need to examine the multifaceted nature of its authority and responsibilities.

Applying Mann's approach to the United States, we find that the US government has a military and policing focus (the *national security state* and *domestic security state*), in part, along with a historical role in policing and enforcing certain moral standards (the *moral state*). It also expresses itself as a *welfare state* and a *regulatory state*. To support these functions, it exists as a *tax state*, while to support economic development, it expresses itself as a *developmental state*, a *bailout state*, and a *globalizing state*. Americans have a difficult time comprehending what government does, precisely because its functions are so varied and different. We propose to introduce readers to what government does by understanding government in terms of these separate functions. The US government is not a single, unified entity that is easy to comprehend or to like/dislike as such. Everyone likes certain parts of what the government does, while disparaging other parts. It is time Americans had a guide to what their government does, so they can more ably make up their minds about the realities of government in their lives. In the chapters that follow, we seek to understand the US government's "institutional peculiarities" by examining the many different faces, or underlying functions, of our American government.

We use two points from Mann's influential approach in the discussions and chapters that follow. First, it is difficult to generalize when it comes to government. Government involves many different types of functions and responsibilities, and each of the different faces of government is, in some ways, unique, developed along its own path.

Second, Mann's understanding of the differences between despotic and infrastructural power provides a counter to the simplistic conservative argument that government and society are engaged in a zero-sum game in which every gain for governmental power is a related loss of power for society. Robert Higgs, for example, provides the definitive conservative response to our view about the growth of government, arguing that as governments increase in power, the broader society loses an equivalent amount of freedom. He decries the expansion of governmental powers, especially over the economy and private economic decision making. As he exclaims, "For those who cherish individual

liberty and a free society, the prospect [of growing governmental power] is deeply disheartening."[22] While understanding that government grows naturally over time, Higgs nonetheless believes that under normal conditions, government remains a small appendage to the private free market economy. It is, however, under extraordinary crisis conditions—such as World War I, the Great Depression, and World War II—that government grows dramatically as the number of governmental institutions grows and the government increases its authority over the private economy.

It is at these moments that we find a transition from the more limited government that sticks to its "traditional protective functions," which involve defending against external aggression, preserving domestic order, and defining and enforcing private property rights. These traditional functions certainly expand—and produce bigger government—as major wars require a ramping up of government's "customary functional and fiscal activities."[23] But Higgs finds that in the United States, the big crises (the two world wars and the Great Depression) have instead produced "Big Government" (with the *B* and *G* capitalized by Higgs), "which denotes a wide scope of effective government authority over economic decision making."[24] For Higgs, governmental authority is legitimate and necessary in the limited, protective sense, but illegitimate, intrusive, and dangerous when it crosses into the realm of economic decision making. Such growth in governmental authority, Higgs writes, has produced "a uniquely American form of participatory fascism."[25]

Mann's approach provides an implicit critique of Higgs's zero-sum assumptions about government growth. By arguing that government has dramatically increased its power over society and the economy during the past century, Higgs presents every increase in government authority as a related loss of societal freedom. He conflates what Mann distinguishes as the despotic versus the infrastructural powers of government. He even reverses what Mann proposes in important ways. Higgs believes that the "protective" powers of the government are necessary and reasonable, while decrying the government's foray into "economic decision making." But Mann envisions the former, protective functions as despotic, that is, as government exercising unilateral power over society. And he sees the latter, economic functions as infrastructural, that is, as government gaining and exercising power only in tandem with societal forces that, along the way, influence what government does. Higgs ignores the ways in which private and public power have grown apace, ensuring that government authority develops in an infrastructural manner, which means an increasing interpenetration of government and society and, often, an increasing control of government by societal forces. Mann argues that governments in general have grown less independent and less powerful in relation to their societies than they once were, both because of the growth in private corporate power

and because of the increasingly complex linkages that developed between state and society in the modern age.

State and Society

In the following sections, we explore further the relationship between state and society, government and the economic system, and private and public power. We do this to fill in the broader state-society context within which government power is exercised, especially since some of the most heated arguments about government concern the government's role in economic affairs, involving issues of taxation, regulation, and the welfare state.

BUSINESS AND GOVERNMENTAL POWER

Given the many misconceptions about the role of government in our society, here we consider how government fits into the broader exercise of power in America, which Mann alludes to in his analysis. The government can deprive its citizens of their life, liberty, and property for various crimes; it can force citizens to pay taxes; and, often in the past, it conscripted men into the armed forces. Because of the ways in which government can forcibly impose various kinds of obligations on citizens, and because of the fear that this power engenders, many contend that government is nothing more than a realm of force and coercion that must be kept as limited and as hemmed in as possible. Meanwhile, our society and economy are often considered realms of freedom, characterized by the absence of coercion and domination. As the argument goes, the less government the better, since then the free-flowing decisions of individual citizens can flourish, and power can remain decentralized. But these assumptions miscast government power and ignore the private exercise of power within society (which includes power based on race, gender, class, and even sexual identity, though we remain focused at this point on private economic power). American government is not authoritarian; much of it is, in various ways, responsive and accountable either to the larger American political community or to specific organized interests within that community. Government does not monopolize the exercise of power in the United States. As Mann discerns, governments today share power with society and with those within society who themselves exercise power.

Just as government has recourse to tools of coercion to force action by those within its sphere of authority, so, too, can we find the exercise of power—albeit a different kind of power—at work in society and in the economy. For example, prominent mainstream political scientists E. E. Schattschneider and Charles Lindblom have both identified the various ways in which

business firms and the corporate executives who guide them exercise substantial amounts of power in America. Schattschneider, for instance, finds that "business so dominates the nongovernmental world that it looks very much like a power system able to compete with the government itself."[26] Lindblom develops the notion of the "privileged position of business" to account for the fact that a nation's corporations have a degree of clout, or leverage, over government and the larger society by virtue of their control of investment and production decisions: "In any private enterprise system, a large category of major decisions is turned over to businessmen, both small and larger. They are taken off the agenda of government. Businessmen thus become a kind of public official and exercise what, on a broad view of their role, are public functions." It is not only government, then, that exercises power over members of American society. Business does, as well, through the decisions it makes. As Lindblom notes, "Jobs, prices, production, growth, the standard of living, and the economic security of everyone all rest in their hands."[27] The crucial difference is that government officials are directly accountable to the society they serve. Government power is visible, acknowledged, debated, and contested; private corporate power is much less so.

Because of the influential, and unrepresentative, nature of business power, Lindblom sees a "duality of leadership" in which both business and government play a leadership role in the United States. Both entities make and enforce decisions that impact society, though government, under normal circumstances, acts with a great deal of deference to business interests. Government officials must often defer to business needs, because they rely on business to provide a stable and growing economy. They cannot command business to invest and produce; they can only encourage and induce business to do so. As Lindblom understands it, "A major function of government, therefore, is to see to it that businessmen perform their tasks."[28]

As a result of the decisional power business enjoys, businessmen not only exercise power within society and over the economy, but over and within government as well: "Businessmen occupy a privileged position. . . . They constitute a second set of major leaders in government and politics." For Lindblom, "collaboration and deference between the two [business and government] are at the heart of politics in such systems. Businessmen cannot be left knocking at the doors of the political systems, they must be invited in." So it is too simplistic and certainly one-sided to argue that government officials are the only ones who exercise power over the nation's citizenry, and that the power they wield is unilaterally imposed on all of society in what Mann would call a despotic manner. Governments today share power with business interests, and government, unlike the business system, is potentially a democratic realm, responsive and accountable to the nation in ways the business system is

not. As Schattschneider understands it, "The political system is broadly egalitarian . . . [while] the economic system . . . fosters a high degree of inequality and invites concentration of power."[29]

Both government and business make decisions that impact society, and we need to understand the ways in which the institutions and officials of both the government and the economy share power. They are necessary components of a single system in which they jointly are the main parts. Neither the government nor the economy is a stand-alone entity. As Fred Block discerns, there is a division of labor between these two realms, where business focuses on short-term profits and growth, while government concerns itself with the larger issues of order, stability, protection of the nation's public, and the long-term viability of society and the economy.[30] To be sure, government officials may want to increase their own power and authority over time, but they can only continue in their positions if they are successful in achieving the basic goals of protection, stability, and order. And in the United States, the easiest way to maintain public order and stability is to sustain a healthy business climate, that is, to be sure to keep most business firms investing. Government officials depend on the tax revenues produced by the private economy to finance governmental programs. They rely on business to keep workers employed and the economy humming, in order to keep voters content with their rule. In this way, Block finds business decisions influencing what government does, as does Lindblom.

Government officials know that if they overreach, it disturbs the healthy business climate that firms expect as their due. As a result, businesses may retrench their productive and investment activities as a rational response to this perceived threat, thereby sparking damaging downturns in employment and economic activity. Although politicians are not directly responsible for this economic slowdown and rising unemployment, the public holds them accountable for this situation. Politicians may very well pay for this by losing their jobs. So government officials see that one of their primary responsibilities is to encourage firms to continue their production and investment activities. They internalize a general concern that any political threat to profits and business freedom may trigger disruptive investment strikes and economic instability that, in turn, will threaten their jobs. As a general rule, then, government officials may generally comprehend the domestic national public interest in terms of this privileged position of business as well as the need for private profits and a healthy business climate that ensures business confidence.‡ What

‡ The *New York Times* recently reported on a congressional effort to do something about the unpredictable working hours of the increasing number of part-time workers in the United States, an effort that reflects the growing frustrations of this expanding sector of workers. The *Times* stated that the legislation "would require companies to pay their employees for an extra hour if they were summoned to work with less than 24 hours'

this means in practice often involves a very active government role in support of business goals. For example, American government actively spurs technological development, secures (through its military might and global state activities) access to overseas markets, has repressed labor organizing at many times in the past, has regulated business competition in the interest of regulated industries, and has recently bailed out key financial institutions when they faltered.[31]

Certainly the expectation that politicians and other officials perform their tasks with an assumption of a certain deference to business expectations does not preclude the fact that they continue to actively pursue their own, independent course. Indeed, in cases such as domestic security, national security, and the control of moral behavior, we should expect policy and institutional developments with less-direct consideration of how the American business community might react. Still, as we will see with regard to the creation of the national security state after World War II, government officials mixed easily with top-level business executives in the fashioning of a dramatic shift in governmental power. Hence, even in what Tilly would argue is one of the most autonomous areas of government power, we find the kinds of state-societal interactions and interconnections that Mann expects only in the civilian-economic parts of the state.

Nonetheless, government does not simply defer to business interests. Rather, it is expected that during "exceptional moments"—such as the emergencies of major wars or economic depressions—government officials can act with more independence from business pressures.[32] In turn, as Polanyi understands it, enforcing free market conditions produces an inevitable backlash by society as engaged publics, over time, demand that government act to curb those elements of the free market that prove damaging to the human population or the natural environment. Block similarly discerns that "pressures from the working class have contributed to the expansion of the state's role in the regulation of the economy and in the provision of services." Schattschneider finds that "the public is willing to get along with the capitalist system provided that it can maintain alongside it a democratic political system powerful enough to police it."[33] It is because of this potential independence of government officials—and the likelihood of their responsiveness to the larger political community—that business executives become involved, to the extent of their

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notice." The piece continues, "Many businesses have opposed these measures, arguing that they represent improper government intrusion into private operations." And it quotes Scott Defife, an executive vice president with the National Restaurant Association, "The hyper regulation of the workplace by government isn't conducive to a positive business climate" (Steven Greenhouse, "A Push to Give Steadier Shifts to Part-Timers," *New York Times*, July 16, 2014).

ability, in what government does. We can see this increased direct business involvement in the nation's politics, for instance, in the wake of the expanded governmental interventions of the 1930s and 1960s.

Instead of simply relying on their privileged position to set the broad parameters for government action, business executives mobilize politically to protect and promote their industry's or their firm's interests. They remain aggressively on the lookout for policies deemed to be against their interest, and they police the limits of governmental power to protect their privileged position and ensure the continuation of a business-government division of labor. The business community perceives rising business taxes, increased welfare spending, or certain kinds of regulatory authority as a threat to their profits and, more importantly, as a threat to the freedom to control their enterprises. They stay vigilant to ensure that the private sector itself remains free from excessive governmental intervention. David Vogel stipulates that American businessmen, unlike their counterparts in Europe—where the role of government is much larger and more intrusive—"distrust their state." This distrust is one key reason why the American government is, in some important ways, "the least interventionist in the advanced industrial world."[34] Business firms pay especially close attention to any government expansions "that would centralize economic decision making or strengthen the authority of government over the direction of the business system as a whole."[35]

What business also often distrusts about the state is its responsiveness to democratic majorities. Vogel reports, "It is the relatively democratic nature of the American state . . . that is in large measure responsible for the particular vehemence of the American [business community's] antagonism toward an expansion of governmental authority."[36] And that vehement opposition to government is directly related to the fact that business has so much to lose. Organized business power dominated the American landscape from the 1880s through the 1920s (see chapter 2), until the "exceptional moment" of the Great Depression ushered in increasing national governmental authority under the New Deal—authority closely connected to a mobilized citizenry. Growing government power under the New Deal thus became associated with enhanced democracy. As Vogel discerns, many nonbusiness interests—organized labor, the unemployed, welfare recipients, the elderly, environmental activists, and so on—are "relatively powerless within civil society . . . [and] rely upon the political process to provide them with whatever protection they can secure against the interests and power of corporate capital."[37]

For Vogel, an enlargement of government is not simply about the growing power of government officials, but also about the aspirations of a democratic citizenry. Not surprisingly, increasing democracy at the national level during

the New Deal proved to be threatening to business interests, revealing some of the inherent tensions between capitalism and democracy. Much of the American business community learned both to fear government expansions, which can potentially upset or upend private economic power relations, and to work aggressively to modify and redirect the growth in national governing authority. Thus business executives were actively involved in the shifting of governmental power into the national security state during World War II and the postwar period. This corporate vigilance in minimizing some parts of government and, indeed, in influencing and shaping the very direction of political developments both confirms the division of labor between government and the economy and secures this division by limiting what government can do in areas where business distrust runs high.

Yet companies do not cast a wary eye on everything the government does. Certain functions of the government more directly serve business interests over time, including the government's legal function (the enforcement of contracts and the protection of property rights), its concern for stability and order, its many purchases from private firms, its investments and subsidies for economic development, and its use of military forces to expand territory, secure access to foreign markets, and repress domestic discontent. The majority of the chapters that follow—including the one on the developmental state, the bailout state, and the global state, as well as many parts of those on the regulatory state, the national security state, the domestic security state, and the tax state—detail the segments of the government that indirectly or directly serve the interests of powerful business firms and industries.

The point is that different parts of the state, and different functions of the government, can serve narrower business interests or can serve broader public interests. In this one sense, the growth of the national government can be viewed partly as the outcome of an ongoing tug of war between different forces in the larger American community, which includes government officials as independent actors in their own right. Government officials do have their own interests, whether these emanate from their unique, independent responsibility for the overall stability and protection of the nation, or from their personal or bureaucratic interests in enhancing their own institutional position and power (which include, for elected politicians, their reelection). But in most cases, as we have seen, concern for their personal and institutional power leads them to defer to business interests or to be responsive to the broader society they serve, which are often not the same thing. Today, many hold disparaging views of government from an assumption—and fear—that these officials simply run the government for their own careerist or power-enhancing interests. But this assumption, while relevant, is too simplistic to explain everything that government

does. We do not further our understanding of government by assuming that what it does simply reflects the self-aggrandizing interest of its officials.

PUBLIC POWER, PRIVATE POWER, AND AMERICAN DEMOCRACY

Public power differs from private power. It is more visible, as well as more accountable and responsive to the larger society. But distinguished scholar Robert Lynd understands that because we have witnessed extreme abuses of power by various authoritarian governmental regimes during the twentieth century, and because political power has commonly been viewed as simply and purely a corruptive force (captured in the adage "power corrupts"), it has become difficult to comprehend the positive and necessary uses of governmental power in a democratic society. As Lynd explains, "The identification of power with dominance obscures the fact that power in a genuine democracy may be a human resource which can be used for the enlargement of human freedom."[38] Government expansion—that is, the expansion of public power—has led, as Schattschneider notes, to an expansion in potentially democratic outcomes. In this, Schattschneider follows Lynd in the latter's formulation that "there is no fundamental incompatibility between democracy and power."[39]

Power is, as we have argued, exercised by officials and institutions in both state and society, by both government and business firms. To highlight the potentially abusive nature of public power while ignoring that of private economic power is to confuse what is at stake, which is holding the inevitable exercise of power in a complex society accountable in some way. As Lynd noted long ago, "The suspicion that surrounds state power has not in general extended so acutely to the growth of organized private powers."[40] The exercise of private corporate power is less questioned, because of the ideological assumptions that private enterprise corresponds to free markets, free market choice, the absence of coercion, and so forth. The now commonly accepted distrust of government is rarely applied with the same intensity, and by so many, to private corporate power, though certainly there have been moments when the American public has expressed distrust and dislike of corporate elites. (We saw this distrust exploited by Bernie Sanders and, to a lesser extent, Donald Trump, during their 2016 primary and presidential campaigns.)

The visibility of public power and the ideological assumptions about private power make government an easier target for public concerns, not to mention that, unlike the situation with private power, it is expected that citizens can hold government accountable. Americans in general, skeptical of public power and socialized to accept large agglomerations of private power, have thus developed a distorted understanding of power in their society. Govern-

ment is too often disparaged as simply an abusive, distant, corruptive, and dominating force. Ironically, this attitude has turned many citizens against the one instrument and process that could facilitate more democratic outcomes. It must be noted, however, that opinion polls today find a large degree of public distrust of government precisely because Americans feel that government has become dominated by powerful private interests, including wealthy individuals and large corporations (see below and the concluding chapter).

We need to be careful about simply equating government action with democratic outcomes. Some majoritarian impulses are repressive or restrictive of individual freedoms. To cite a few examples, we have seen the US government intern Japanese-Americans during World War II, engage in witch hunts against supposed internal enemies during and after World War I and during the Cold War, imprison a greater percentage of its population than any other society, and infringe upon private intimate relations time and again (see chapters 5, 6, and 9). Still, we can acknowledge the harm that governments can do, while also understanding that power is a necessary resource in any stable, organized society. The critical attitude toward the exercise of government power can go too far, especially if attention to public power is combined with complacency toward private power. Lynd recognized this issue almost sixty years ago, when he wrote, "Liberal democracy has . . . tended to resolve the problem of power by quantitative limitation of its use. And as a result of this . . . [we have seen] the progressive transference of this social resource from use for the ends of democratic society to use by private power agencies [including private corporations] for their private purposes."[41]

Then, as now, Lynd understood that a government dominated by private corporate power can produce a bigger government that serves the more narrow ends of corporate America: "One may suggest that under such circumstances the contest [between democracy and capitalism] runs increasingly to the disadvantage of democracy. One should not be deceived about this by the growth in the scope of governmental activity in the United States in the past quarter-century."[42] Government was going to grow in certain ways because of the problems facing a rapidly industrializing American society (just as government grew elsewhere), but the question remained: to what extent was government going to be tethered to the economic majority, or instead to the needs and demands of private corporations? Business power, and business concerns about governmental responsiveness to the economic majority, ensured that there would be limits to the development of responsive government. As we show in the next chapter's historical overview, some key parts of government expansionism over much of the twentieth century, but especially from the period 1933 to 1975, somewhat curbed private, corporate power and expanded government responsiveness to the economic majority. But the period of what Mann calls "reformed

capitalism"—which includes "welfare states, universal public health and education, progressive taxation, legitimate collective bargaining, and Keynesian macroeconomic policies"—was followed by an aggressive corporate offensive, taking off in the mid-1970s to roll back that part of government responsive to the economic majority.[43]

Perceiving that taxes and bigger government were connected to welfare dependency, and that growing inequality was the result of an elite dominance of American politics, the traditional popular distrust of government that had faded in the post–World War II era grew again, beginning in the 1970s. Many Americans decried both welfare policies and the increasing dominance of American politics by entrenched private-sector interests inside the Washington, DC, beltway. Keen political observer Kevin Phillips, advisor to both Republicans and Democrats over the years, refers to the "rise of Washington's parasite culture" to describe the growing disconnect between the nation's governing elites and the mass of Americans. Seeing that an expanding government in recent decades has been connected to parasitic entrenched interests that dominate government policy making, Phillips concludes that "decision making in the city [of Washington] has increasingly come to be a polling of affected campaign donors and interest groups rather than of the people."[44]

Thus one of the key reasons distrust in government has grown over the past few decades is the close relationship between government officials and corporate business interests. The Occupy Movement, the focus on the Wall Street excesses that led to the economic collapse of 2008, and the related Tea Party focus on government bailouts of Wall Street fat cats, all share this sentiment, though they certainly differ in terms of whom they blame for this situation. And in some important ways the distrust has hindered the public's acceptance of government more than it has the public's resistance to private, corporate power. But maybe this result is not as odd as it seems, since many in the American public figure that if government is going to serve corporate interests at their expense, then blaming government, over which they have some say, is logical.

Conclusion

We have reviewed arguments in this chapter that envision public power as potentially producing decidedly democratic outcomes that upset and upend private power relations. A growing government is thus controversial, in one important sense, precisely because of the potentially democratic effects created by its activities. In the discussion so far, we have understood that government is not the only institution that exercises power in American society; government shares power and can be at times a subordinate player in the exercise of power in America. We have argued that there is no necessary simple zero-sum power

game (that is, that any increase of governmental power means a related decrease in society's freedom) between government and the economy-society when the government expands its responsibilities and operations. Government and society developed alongside each other, government power has always been necessary and integral to society's stability and economic development, and much of what government does is the result of democratic pressures.

There are cases, however, such as the vast increase in government surveillance since the 9/11 attacks, or even the earlier domestic surveillance and repression associated with the "Red Scare," when we find governmental actions that trouble supporters of civil liberties. The whole idea of civil liberties is based on the idea that because government is the repository of so much repressive authority, we need certain written and judicially enforced guarantees to restrict the exercise of governmental authority over individual citizens. It is openly acknowledged that we need to limit government's reach, because of the potential for the abuse of governmental authority. But we do not, as a society, entertain the same skepticism and distrust of private, corporate power.

In turn, the governmental powers used to restrain civil liberties—including, most often, the government's repressive functions involved in policing moral standards and pursuing domestic and national security—are those powers that many anti-government, free market conservatives are generally most comfortable with for various reasons (though this is where many libertarians, who are distrustful of even the basic policing functions of the government, part company with other conservatives). Legitimate concerns over the government's repressive powers—expressed through America's rich legacy of championing civil liberties, beginning with the revolution against the British—are often channeled into concerns over the government's other functions, ones that often reflect its responsiveness to society, whether to private business interests or to more-democratic pressures. In much of what the government does, we rarely find a simple case of the government pitted against society. This seemingly popular conceptualization distracts attention from the fact that few, if any, Americans really want the government to stop doing what it does.

As was clear during the 2008 economic meltdown, aggressive governmental intervention was required to stabilize the larger economic system and prevent a complete collapse of the global trading system. Some did not believe that the aggressive interventions were necessary (and some thought they did not go far enough in re-regulating the banks and rescuing homeowners and workers displaced by the crisis), but most Americans expected the government to act, and most of the politicians in Washington, DC, consented to enormous bailouts to stabilize the economic system. Again, one only has to contemplate those areas of the globe where government is absent or too weak to function properly to gain a firm appreciation for the value of strong government. In short, given the

examples of extreme dysfunction around the globe, it seems clear that a robust economy and society depend on a strong foundation of government power.

But government is not a centralized, unified entity. It is involved in many different kinds of activities and functions, and its multiple institutions divide themselves in terms of the functions they serve. Making sense of what government does requires that we acknowledge the multifaceted nature of governmental functions, and then recognize that there are fundamental differences between these various functions. Government can be an instrument for supporting government officials themselves, for increasing responsiveness to the economic majority, or for serving the interests of those with private power.

Government also has a distinctive role to play, because of the government-business division of labor. No other institution has overall responsibility for the long-term stability and success of the entire nation, so government is the fallback guarantor for that stability and for the nation's continuing success. It is this role that grants government such potentially overwhelming power and authority. Moreover, this role means that government is defined by a distinctive set of institutions, staffed and led by personnel (politicians and bureaucrats) having their own concerns and goals. Governments also develop institutional expertise and strengths over time, along with new policy commitments that independently shape the economy and society. Still, as we have elaborated here, governments rarely operate completely independently of social and economic interests, since, government and society developed alongside each other, the one affecting the other in numerous, varying ways over the course of the twentieth century.

In the next chapter, we trace the independent impact of government over the course of US history. We outline the twentieth-century growth of governmental authority, revealing how government responded to the accelerating challenges of economic growth and economic collapse with expansions in the welfare state, the regulatory state, the bailout state, the tax state, the developmental state, and even the moral state. Emerging awareness of threats to environmental safety and health brought changes to the original regulatory state, just as America's emergence as the globe's most powerful nation led US leaders to create the national security state and the new global state functions, and to instigate changes in the domestic security state.

Notes

1. George Will, "2013's Lesson for Conservatives," *Washington Post*, December 27, 2013.

2. Eduardo Porter, "For GOP, Health Care as a Scare," *New York Times*, October 2, 2013.

3. William J. Novak, "The Myth of the 'Weak' American State," *American Historical Review* 113, no. 3 (2008): 752–72. See also Desmond King and Robert Lieberman, "Ironies of State Building," *World Politics* 61, no. 3 (2009): 547–88. See also Jacob S. Hacker and Paul Pierson, *American Amnesia* (New York: Simon & Schuster, 2016).

4. Charles Tilly, "Reflections on the History of European State-Making," in Tilly (ed.), *The Formation of National States in Western Europe* (Princeton, NJ: Princeton University Press, 1975), 6.

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6. Ibid., 23.

7. Ibid., 35.

8. Ibid., 44.

9. Ibid., 30.

10. Karl Polyani, *The Great Transformation* (Boston: Beacon Press, 1957), 139.

11. Ibid., 40.

12. Ibid., 37.

13. Ibid., 57.

14. See Fred Block, "Karl Polanyi and the Writing of *The Great Transformation*," *Theory and Society* 32, no. 3 (June 2003): 282.

15. Polanyi, *The Great Transformation*, 137–38.

16. Ibid., 133.

17. Ibid., 3.

18. Michael Mann, *The Rise of Classes and Nation-States, 1760–1914*, vol. 2 in *The Sources of Social Power* (New York: Cambridge University Press, 1993), 2:57.

19. Ibid., 2:504.

20. Ibid., 2:61.

21. Ibid., quotes at 2:377, 75, 88, 76.

22. Robert Higgs, *Crisis and Leviathan: Critical Episodes in the Growth of American Government* (New York: Oxford University Press, 1987), 262.

23. Ibid., 62.

24. Ibid., 3, quotes at 62.

25. Ibid., 256.

26. E. E. Schattschneider, *The Semisovereign People: A Realist's View of Democracy in America* (Hinsdale, IL: Dryden Press, 1960), 116.

27. Charles E. Lindblom, *Politics and Markets: The World's Political-Economic Systems* (New York: Basic Books, 1977), quotes at 175, 172.

28. Ibid., quotes at 175, 173.

29. Ibid., quotes at 175–76, 175; Schattschneider, *Semisovereign People*, 117.

30. Fred Block, "The Ruling Class Does Not Rule," in *Revising State Theory* (Philadelphia: Temple University Press, 1987).

31. Lindblom, *Politics and Markets*, 205; Block, "Ruling Class," 65.

32. Block, "Ruling Class," 87.

33. Ibid., quotes at 87, 64, see also 65–66; Schattschneider, *Semisovereign People*, 120–21.

34. David Vogel, "Why Businessmen Distrust Their State: The Political Consciousness of American Corporate Executives," *British Journal of Political Science* 8, no. 1 (January 1978): 53.

35. Ibid., 50.

36. Ibid., 61.

37. Ibid., 63.

38. Robert S. Lynd, "Power in American Society as Resource and Problem," in Arthur Kornhauser (ed.), *Problems of Power in American Democracy* (Detroit: Wayne State University Press, 1957), 5.

39. Ibid., 38.

40. Ibid., 12, see also 24.

41. Ibid., 5–6.

42. Ibid., 41.

43. Michael Mann, *Global Empires and Revolution, 1890–1945*, vol. 3 in *The Sources of Social Power* (New York: Cambridge University Press, 2012), 3:459–61, quotes at 461.

44. Kevin Phillips, *Arrogant Capital: Washington, Wall Street, and the Frustration of American Politics* (Boston: Little Brown, 1994), 36.

The Significant State

Far too little attention has been paid to the significance of the state in the United States. This has led to distorted and misleading views of the role of government. Scholars, for various reasons, have identified American exceptionalism as the fact that the American state and government were smaller, less powerful, and less interventionist than their European counterparts. For many observers, given the twentieth-century rise of powerful states (in, for example, Nazi Germany and the Stalinist Soviet Union) and the continuing Cold War posture that juxtaposed US freedom to communist tyranny, America's virtue could be found in its smaller governmental sphere, which maximized private-sector freedom. Strong and effective government was not lionized as an advantage, but rather as a liability. Many conservatives demonized growing governmental power as a slippery slope leading toward a snuffing out of freedom. Government itself became the repository for often hysterical fears in this regard.

Accurately assessing government in this ideological context became difficult. As William J. Novak has noted, historians read back into nineteenth-century America "a compelling and remarkably consistent national narrative that explained America's special path as the product of a persistent preference for society over polity, individual initiative over collective action, and private competition and voluntarism over public regulation and state direction."[1] Most scholars also extended this one-sided view of US government in the nineteenth century into understandings and analyses of twentieth-century government. Even as the Cold War ended, many observers celebrated the collapse of the Soviet Union and a new era of globalization as demonstrating the genius of free markets over and against heavy-handed state actions. In this continuing context of heralding the role of the private sector and minimizing the role of government, it has been difficult for scholars to free themselves from assumptions of a weak American state.

In recent years, however, there has been a scholarly challenge to these assumptions. The focus of much of this work has been on the early underpinnings of American government during and after the formation of our Constitution, as well as during the nineteenth century, the supposed century par excellence of limited government, laissez-faire, and the triumph of private initiative. What

recent scholarly work has found is an extensive array of crucial government interventions, beginning with the early days of the republic. As Novak proclaims, recent scholarship has unearthed the fact "that the American state is and always has been more powerful, capacious, tenacious, interventionist, and redistributive than was recognized in earlier accounts of U.S. history."[2]

It is easy to forget that the Constitution itself was written to favor an active and strong federal government, one that exercised the necessary fiscal and military components of state power in order to enable the United States to compete fully with the developed military nations of Europe and secure political and economic stability at home. The construction of such a strong state is in accordance with Tilly's expectations. One need only to read Article I, Section 8, of the Constitution to realize the extensive powers of the new government. The entire point of the Constitution was to overcome the governmental weaknesses of the Articles of Confederation, the nation's first constitution.

The Framers were concerned about the problems of an overbearing government in the wake of a revolution fought against the British Empire. But they fully understood the necessities of building an American counterpart to Britain's strong navy and army, and they understood they needed to reproduce the common market that Britain had imposed upon the thirteen American colonies. These military and economic tasks would also require a government that could tax its citizens. In this regard, Max Edling finds that the Framers understood the need to create a "state possessing all the significant powers held by contemporary European states."[3] The touch of such a strong national state, though, would be lightened and limited through federalism's distribution of power to the many states that composed the nation. Successful in creating a central government that possessed the same fiscal and military powers as their European counterparts, the Framers left the bulk of the governing role to the individual state governments. In this way, they legitimized the creation of a strong national government to a population that was wary, because of the British experience, of heavy-handed despotic rule. The Framers allowed for the proliferation of what Mann would call an infrastructurally extensive and interventionist government at the state and local levels, while the federal government developed its own powers and easily expanded its functions during war emergencies, especially with the Civil War.

Both national and state governments cooperated to establish a legal order that permitted capitalist development, yet managed the risks inherent in market competition with constraints such as limited-liability laws and bankruptcy laws. As David A. Moss finds, "The emerging American economy was full of energy but also teeming with risks that threatened to undermine growth." Governmental power, exercised through an aggressive use of lawmaking, was not a threat to individual initiative or the expansion of market activity. Rather,

it was a mechanism, as Polanyi saw, to create, facilitate, and expand such activities. As James Willard Hurst has documented, "Where legal regulation or compulsion might promote the greater release of individual or group energies, we had no hesitancy in making affirmative use of the law." Government and the law grew throughout the nineteenth century, providing the foundation for entrepreneurial activity. Without a secure legal framework, an array of government subsidies and loans, and an assertive military posture, entrepreneurial efforts would have been stifled. For Hurst, aggressive lawmaking secured the rights of private property, so the exercise of governmental power was "inextricably involved in the growth of our market economy."[4]

A host of state and local regulatory laws emerged as lower-level governments throughout the United States exercised tremendous power over everyday life with extensive regulation over health, safety, moral, and economic activities. Contrary to the myths about limited weak government and a triumphant doctrine of laissez-faire, the scope of state and local power was vast, and its responsibilities intruded into numerous and detailed aspects of everyday life. Liberty was not viewed as freedom from the law and regulation. As Novak has argued, "It always had to conform to the superior power of self-governing communities to legislate and regulate in the public interest." Brian Balogh emphasizes how America's preindustrial era remained dominated by republican thought that "emphasized energetic governance" and "did not acknowledge a distinction between state and civil society." He finds that early America "far surpassed even Great Britain's capacity to bring the power of the state to bear on the lives of individuals." Much of this early activism had to do with enforcing slavery and, afterward, the Jim Crow system of segregation.[5]

The national government remained active as well, equipping a strong navy to protect US shipping and trade, as well as building an army strong enough to secure the frontiers and eliminate or displace Native Americans from lands coveted by settler groups. It also constructed a national legal system that established a country-wide common market economy for the states. As Balogh stresses, "A national legal structure laid the foundation for integrated markets, transportation systems, and, eventually, the modern business corporation." Along with these important legal underpinnings of national strength, the federal government facilitated transportation and communication, central components of America's developmental state. For example, very early on, Congress created an extensive postal system that dwarfed those in Great Britain and France. While provision of a postal system may seem quaint by today's standards, its significance should not be overlooked. As Richard John has shown, the postal service allowed information to fully circulate throughout the entirety of the US territories, and this communication infrastructure integrated isolated communities and individuals, contributing to a national identity and sense of

citizenship. It also facilitated extensive nation building by securing the basic networks of communication and trade. As John concludes, "No other branch of the central government penetrated so deeply into the hinterland or played such a conspicuous role in shaping the pattern of everyday life." The postal service provided the political infrastructure that made it possible to construct an American national identity and integrate a far-flung continental empire.[6]

Governmental power was also brought to bear on developing the nation's transportation networks. Railroads, especially, benefited from governmental support. The national government provided extensive land grants and put army engineers to work mapping and clearing routes. State governments likewise issued charters that granted railroads special privileges, such as the right of eminent domain, tax exemptions, and access to state lands, and "states and municipalities provided a good deal of capital through the direct purchase of stock and loans." With railroad expansion, the American economy opened up on a truly national basis, stimulating the growth of stock and bond markets, and the birth of the modern corporation.[7]

Earlier scholarly and popular understandings that celebrated the myth of laissez-faire and a very limited governmental presence missed the fact that the United States, as Desmond King and Robert Lieberman conclude, "possesses a different kind of state," one reflecting Mann's view of infrastructural power: "American state building, strength, and institutional capacity form through links with society, not necessarily by virtue of autonomy from society." Traditional Weberian interpretations understood state power in what Mann would call a despotic sense, positing that state power and strength flowed from a centralized bureaucratic organization, with an independent set of elites insulated and autonomous from society, capable of imposing authoritative decisions upon that society. Because of the predominance of this view, scholars focused on the American state's weaknesses: its constitutional fragmentation, dispersed power, and bureaucratic thinness.[8]

Balogh argues that it was easy to miss even the national government's substantial role, because it was often "out of sight," enabling and assisting state and local governments and private and voluntary groups (Mann's infrastructural power), rather than commanding from on high (Mann's despotic power). Balogh thus finds that the belief in a minimalistic nineteenth-century government, held by conservatives and liberals alike, simply misreads the past: "Although the United States did indeed govern differently than its industrialized counterparts, it did not govern less." The national government militarily secured and dominated a continental empire, as well as imposed a common economic and legal order throughout the newly acquired territories. Economic growth, Balogh argues, could only be assured with "the exercise of *national* authority

to protect land titles, provide security, forge trading opportunities, and reinforce shared values regarding religion, education, and language."[9]

None of this could be left to chance or to the so-called genius of the free market. Order, stability, and protection—provided through a national government not shy about exercising its fundamental responsibilities—proved to be a uniquely governmental contribution to the growing strength of the United States as a whole. The nineteenth century was not, therefore, an era of laissez-faire and limited government. As Marc Eisner concludes: "Enormous financial support for new transportation technologies, tariffs designed to promote development, and financial regulations were some of the explicit areas in which public policy promoted economic development in the nineteenth century. Public policy provided an important basis for economic growth and facilitated the emergence of a new corporate economy."[10] America's economy and society grew alongside, and with substantial assistance from, American government. The government was never a bystander to America's success. Even in the nineteenth century, its direct contributions to this success were numerous and substantial, despite the fact that the form of its interventions proved to be different from that of the seemingly more substantial states of Europe.

The Beginnings of National Interventionism

The Progressive Era represented a transitional period to a more fully developed and active national governmental role in stabilizing a rapidly modernizing society and economy. It was the first national foray into overt economic intervention, as Congress established the underpinnings of the national regulatory state. Key laws during this period included the 1890 Sherman Antitrust Act, the 1906 Pure Food and Drug Act, the 1913 Federal Reserve Act, the 1914 Clayton Antitrust Act and the Federal Trade Commission Act, and various state laws designed to regulate hours, wages, workmen's compensation, and child labor (an aggressively conservative, pro-business US Supreme Court struck down most state regulatory laws as an unconstitutional infringement on the rights of private contracts). An important element of the tax state was established in 1913, with the Sixteenth Amendment to the Constitution enabling Congress to institute an income tax.

The Progressive Era reform period emerged in the wake of several different kinds of popular pressure, including the sustained agrarian radicalism of the late nineteenth century (the Populist Movement), various workers' movements, and a less-coherent but influential Progressive Movement of middle-class urbanites, all calling for varying degrees of state and national interventions to curb the predations of increasingly powerful corporations. The Populist Movement specifically called for national ownership of the railroads and the banks, two

entities that had a stranglehold over many farmers. Banks preyed on the farmers' dependence on loans to afford the seed they planted every spring, while the railroads preyed on their need to move their harvest to urban markets every fall. As industrialization took hold, the radical farmers' concerns became merged with other reform movements, including many variants of worker radicalism and that of the Progressives. Workers organized in the face of terrible pay and horrible working conditions, but their efforts often withered because of massive public- and private-sector repression. One of the largest private police forces ever assembled in the United States, the Pinkertons, were utilized by many companies and industries to infiltrate and forcibly repress attempts to organize unions or initiate any strike activity. In addition, the National Guard was employed in the same way, and courts throughout the United States used their injunction powers to deny workers the right to organize and strike.

The Progressive Movement remained distinct from farmers' and workers' agitations. Progressives were middle class, established, and primarily urban (in juxtaposition to the rural Populists). The Progressives were concerned about the rapid changes initiated by industrialization—urbanization, mass immigration, growing business-labor strife, and the rise of giant corporations that threatened to undermine decentralized local markets. Seeing corruption in their city governments—and as being endemic to the new, powerful corporations—they not only promoted local political reform, but also a stronger national governmental presence to deal with the suddenly chaotic changes in power relations they confronted. As Samuel Hays summarizes, "To cushion the impact of industrialism, the people of the United States sought assistance from government."[11]

Citizen groups and social movements pushed for protections against unsafe working conditions, terrible pay, adulterated food and drugs, and unstable markets. Concentrated economic power generated charges of monopoly, and many critics argued that the nation had become a plutocracy. In response, segments of the business community also pushed for government regulation to stabilize markets, ensure consumer confidence in product safety, and weaken radical political movements challenging capitalism itself. The growing complexity of American economic life created the conditions for much greater economic booms and busts, and, with them, more-intense class conflicts. Together, each of these factors spurred the call for greater national government responsibility.[12]

Still, the Progressive Era growth in government remained mired in irony. Although popular pressures spurred the new national activism, much of the newly created regulatory legislation responded to business concerns. As chronic cutthroat competition threatened both economic and political stability, influential industrialists continually sought governmental assistance to regulate the

worst aspects of industrial competition. Gabriel Kolko reports that "many businessmen increasingly saw politics as the arena in which to find solutions for wasteful competition, inconsistent state regulations, the easy entrance for new firms into their industry, and potential crisis." At this moment of American history, it was the business community itself that provided the most influential prod to a growing government. As Kolko concludes, "It often appeared to many businessmen that the political structure was the only place to find a unifying mechanism and establish a legally binding common denominator and rules of conduct." The American economy, as Polanyi would expect, did not develop autonomously, but rather with a great deal of political direction that was itself influenced by business forces. As Mann understands it: "Overall, the Progressives helped modernize economic and political power. . . . They made business more honest and open, but they failed to redistribute much power. Government infrastructural power was harnessed to big business. America became dominated by the corporations, banks, and trusts and aided by federal and state bureaucracies, all relatively uninterested in workers or farmers." Despite the efforts of Populist farmer radicalism, urban muckrakers, and multiple variants of labor radicalism, Vogel affirms that "the Progressive Era produced no institutional force or political faction capable of challenging effectively corporate interests and goals."[13]

Still, government at all levels, but especially, and for the first time, the national government, was shouldering more responsibility for the economic stability of the nation. America was growing fast, and problems related to immigration, urbanization, industrialization—rapidly increasing social tensions, infrastructural needs, worker struggles, bank failures, cutthroat competition, and concerns about the growing power of private corporations—quickly outstripped the ability of the private sector and individual state governments to meet these challenges effectively. The national government became more relevant and influential, with greater legal and institutional clout over the national economy. World War I further elevated the importance of the national government as the private economy neared full collapse by early 1918, due to a deluge of chaotically placed military orders that easily overwhelmed the sprawling and disordered American economy.

In response, the government quickly developed a wide range of boards and agencies that orchestrated a series of workable arrangements to restore a semblance of economic order amid the increasing bottlenecks and shortages. Businessmen from the newly regulated industries occupied many of the most important posts, and they dominated the wartime bureaucratic machinery. Although quickly dismantled after the war, this close wartime cooperation between business and government represented the culmination of the Progressive Era's business-dominated governmental expansions and provided a rich legacy that

greatly influenced future government expansions. The national government's response to the Great Depression drew heavily from this experience (as did the government during World War II), but Franklin D. Roosevelt's New Deal produced a competing model for governmental expansion.

The "Revolution of 1932"

During the Great Depression, as other nations wondered whether democratic capitalism had run its course, and as much of Western Europe toyed with or fully surrendered to forms of fascism, Roosevelt's New Deal offered a successful model of activist government that did not require the surrendering of personal freedom. Roosevelt's New Deal greatly expanded the boundaries of American democracy, leading Schattschneider—not a scholar prone to hyperbole—to designate the shift in governance as "the revolution of 1932." Schattschneider reverses the often-accepted notion that growing government power means a related loss of personal and societal freedom. As he understands it, growing governmental intervention reflected, in part, a newly mobilized American public unused to having much political influence at the national level. The New Deal opened up the national political system to almost all Americans for the first time, and this increased scope of involvement dramatically expanded the content of American democracy.[14]

Prior to the New Deal, the American public had been locked out of national politics for the most part and had been schooled by their national leaders, both public and private, that their economic troubles were private problems outside the scope of governmental responsibility. This ideology reflected the dominance within American politics of propertied business interests anxious to keep the concerns of common Americans out of the orbit of the government's affairs. But the Depression seriously undermined the influence and standing of the American business community. William Leuchtenberg reports that "by the winter of 1932, the businessman had lost his magic and was as discredited as a Hopi rainmaker in a prolonged drought." The nation had hit rock bottom in many ways. As Richard Hofstadter stresses: "When FDR took his oath of office, the entire working apparatus of American economic life had gone to smash. The customary masters and leaders of the social order were themselves in a state of near panic. Millions were unemployed, and discontent had reached a dangerous pitch on the farms and in the cities."[15]

For decades, dominant business forces had wielded the prevailing ideology of laissez-faire to argue that relations between employers and employees were a sacrosanct, private, contractual relationship protected from governmental interference. The US Supreme Court also imposed this ideology in its many decisions, rejecting almost any governmental regulation of economic affairs.

Laissez-faire was losing its resonance, however, during an extended period of economic distress and growing governmental activism. During the Progressive Era, the American public already could easily discern a growing partnership between business and the government. During the Depression, as business forces clamored for the lifeline of government assistance to stabilize their industries, the American public lost any remaining faith in the self-regulating nature of free markets.[16] Still, as Republican Herbert Hoover's administration rolled out program after program on behalf of the railroads, large farmers, banks, and the nation's basic industries, little was done for the unemployed and the destitute.

Promising little more than a new deal "for the forgotten man at the bottom of the economic pyramid," Roosevelt unseated Hoover and soon enough came face-to-face with the rising expectations of a clamorous public. Unemployment and destitution, previously conceived of as private troubles and a matter for local governments and private charities, became redefined as public problems, becoming the responsibility of the national government. Growing unrest, disruption, and protest from a mobilized public upended the prevailing business dominance of national politics. Revived national political competition (outside the solidly Democratic South, at least) changed the dynamics of national politics as both parties came under pressure to be more responsive to the concerns of common Americans.

The Democrats felt this pressure most directly—Roosevelt and other Democratic leaders sought to solidify their standing with the new emerging voting bloc that had swept them into power and continued to press them for results. For Frances Fox Piven and Richard Cloward, "the Roosevelt administration reached out to people in the middle and the bottom of American society because its hand was forced by popular mobilizations and the uncertain electoral repercussions which they produced." The resulting expanded governmental responsibility for most Americans' economic security was, in many ways, something radically new. As C. Wright Mills discerns, "For the first time in United States history, social legislation and lower-class issues became important features of the reform movement." As Schattschneider concludes, "The election of 1932 was much more than the defeat of a political party; it was something very much like the overthrow of a ruling class."[17]

The New Deal was never one systematic program. The problems the government faced proved to be immense and varied, and Roosevelt was a pragmatic, experimental politician. With a flurry of legislative activity unparalleled in American history, Roosevelt's New Deal focused on relief, recovery, and reform. Some policies dealt with immediate problems, such as the epidemic of runs on banks in 1932 and the shocking collapse of industrial production. In order to restore confidence, banks were temporarily closed while government

officials scrambled to establish standards for them to reopen, and Congress passed a series of laws designed to stabilize industry and agriculture. Business, accustomed to being in the driver's seat, remained there in many ways, though the political dynamic was shifting as the national government, for the first time, provided relief for the unemployed and income security and old age pensions for those unable to work, and secured for workers the right to organize unions, along with establishing minimum wages and maximum working hours. As a result of these and other policies, the relationship between Americans and the government in Washington, DC, would never be the same. Americans now looked to the national government to provide a measure of individual economic security, as well as the everyday economic stability of the nation. The US Supreme Court, which had previously overturned many state and national reforms, reversed itself and allowed the development of expansive national power.

The New Deal's reform energies began to decline when World War II arrived, but by this time, the national government had taken on extensive new regulatory, fiscal, and redistributive functions, which were added to its old functions of security, economic promotion, and moral regulation. The modern state had arrived, and it did not stop growing with the end of the New Deal. In 1946, amid fears that wartime demobilization would lead to massive unemployment, Congress passed the 1946 Employment Act. It formally acknowledged what the public had come to expect: an active president responsible for managing the economy. The act declared that it was the responsibility of the federal government to promote "maximum employment, production, and purchasing power."[18] Congress required the president to submit an annual report in support of these goals and created a Council of Economic Advisors to assist him in carrying out this responsibility.

A growing government did not displace or reduce the levels of freedom enjoyed by American citizens, however. Now, for the first time, many Americans looked to the national government and national politics as having direct relevance to their lives. Voting rates rose, and government at all levels had to acknowledge a new relationship with a newly motivated voting populace. But some Americans did look upon the new national interventionism with growing dismay. Southern authorities grew increasingly worried about the possibility that expanding national interventionism might empower African-Americans and help overturn their racist regimes, and they worked assiduously to prevent New Deal programs from upsetting their local power arrangements. The South wanted, and desperately needed, national money, but not at the expense of sacrificing white privilege and power.

Likewise, many businessmen worried about the ways in which growing government authority altered the power equation in American society. As Vogel understands it, until the New Deal, "the large business corporation in the United

States effectively enjoyed a monopoly of the political and institutional power without parallel in the capitalist world in the twentieth century." The New Deal, however, "witnessed the mobilization, organization, and institutionalization of a wide diversity of nonbusiness and anticorporate interests." As the new citizen activism drove new governmental activism, the New Deal "spawned institutional and organizational sources of power outside direct corporate purview," and power in American society became more widely distributed.[19]

Many regular Americans, who exercised little power in the private sector, found that a growing public sector evened out, to some extent, private power relations, so much so that incomes and wealth began trending toward equality for the first time in fifty years. The New Deal empowered many Americans who had never before experienced a more level political and economic playing field. The growing government under the New Deal thus became associated with enhanced democracy. As Vogel concludes, many nonbusiness interests—organized labor, the unemployed, the elderly, and so on—are "relatively powerless within civil society." As a result, they "rely upon the political process to provide them with whatever protection they can secure against the interests and power of corporate capital."[20]

As we show in the chapters that follow, not all the resulting policies were designed to benefit regular Americans. H. W. Brands sums up most thinking by noting, "In certain respects the New Deal was structurally conservative, shoring up the capitalist system as the capitalists themselves might have done had they been able." Still, the New Deal laid the basis for a more permanent governmental responsibility for the nation's economic stability, while also expanding the government's base of support. As Benjamin Friedman observes, Roosevelt's New Deal sought "input and participation from a more diverse collection of constituencies than ever before. And the intent of all this political activism was not just restored economic prosperity but more equal economic opportunity."[21]

World War II and the National Security State

The New Deal revolutionized American governance, but so did World War II. A depression and a world war both resulted in tremendous gains in the national government's power and authority, but the war would prove to be more influential. The New Deal had roused business animosity and produced an opposition congressional conservative coalition that, together, sought to roll back many New Deal initiatives. This did happen to an extent, in ways that hampered the expansion of democratic reform. On the one hand, the welfare state remained limited and fragmented, especially compared with other nations, and labor unions suffered through a series of attacks in the postwar years that, over time, weakened their ability to anchor reform. On the other hand, World

War II set the nation on a very different trajectory from the New Deal. The war bequeathed to the nation a national security state that channeled governmental energies outward, into international activism, versus a domestic activism that upset private power relations. As Schattschneider astutely observes, "The change in public policy that followed the 1932 election was the greatest in American history," but "the New Deal itself was in turn swamped a decade later by an even greater revolution in foreign policy arising from World War II and the Cold War," as government power flowed into the national security state, military Keynesianism, and the military-industrial complex.[22]

While World War I gave the United States its first taste of modern total war, World War II required a much larger and broader overall mobilization of the government, the economy, and society. This time around, the much greater mobilization produced an unprecedented expansion of military authority, and, after the war, the United States fully integrated this expanded military strength into the center of national authority. After previous military mobilizations, the United States had quickly demobilized its forces, but with the 1947 National Security Act, Congress institutionalized the wartime mobilizations into what President Dwight Eisenhower would call the "military-industrial complex."[23]

Conservatives and business forces preferred this kind of government strength and activism to the New Deal's domestic activism. High levels of military spending—that is, military Keynesianism—did not disrupt or threaten the private power of corporations, as did parts of the New Deal. And this type of spending provided substantial benefits to some of the biggest corporations and to certain cutting-edge aerospace, computer, and electronics firms, ensuring these companies a government-subsidized global leadership role. Global military hegemony, in turn, underwrote the corporate desire to dominate global markets. The rise of American empire may be the least noted yet most significant facet of modern postwar American government. As we can easily see from current developments, a nation that argues endlessly, and often fruitlessly, over controversial domestic policies nonetheless can manage to mobilize itself for military adventures abroad and for huge military expenditures at home. The military capabilities of the United States constitute one of the most impressive conglomerations of state power the world has seen. As Schattschneider concluded in 1960: "American government has become a global operation. We have troops stationed in Germany in peacetime. The fleet is in the Mediterranean. United States military bases ring the globe. . . . As a matter of fact, the changes in the regime could hardly have been greater if we had had a violent revolution."[24]

Government spending anchored postwar American prosperity. Combining continuing military investments with a postwar GI Bill (that provided almost $100 billion in benefits for returning GIs), government financing for the new

interstate highway system, and large agricultural subsidies, the US government became a major stabilizing force for American capitalism. Total government spending (federal, state, and local) increased from 20 percent of the gross national product (GNP) in 1940 to 31 percent by 1962, and then 40 percent by 1990. The rise of big government through the 1950s proceeded on a different basis than did its beginnings in the New Deal, however. As Mann reports, "Unlike [during] the New Deal, state planning and bigness lacked popular mobilizations or indeed any connection with the Left." He concludes, "This was a big state with big corporations, but conservatives pretended otherwise."[25]

Everyone pretended otherwise. The American public entered a period of denial about the reality of big government, cheered on by politicians and conservative ideologues that turned the Cold War at home into a Manichean struggle of governmental diktat versus free market freedoms. It helped that the Left, which had flourished during the dark days of the Depression, was now discredited and under attack in a domestic Cold War–atmosphere that meant loyalty programs, witch hunts, blacklists, and a demonization of critical dissent. Many Americans came to enjoy a prosperity underwritten by enormous governmental expenditures, but they went about their lives being told they had made it all on their own efforts. In turn, the "Red Scare" at home delegitimized oppositional voices, and Americans, for a time, embraced a stifling conformity cloaked in a celebration of Americanism.

The Great Society and the War on Poverty

Despite the conformity, the stable economic growth, and the new consumerism of the 1950s, the 1960s became a decade of renewed activism and expanding governmental commitments to greater opportunity and equality. Congress passed substantial and lasting expansions in the welfare state as part of President Lyndon Johnson's War on Poverty. It also established an entirely new regulatory regime that reflected the concerns of workers, consumers, and middle-class communities. In January 1964, under the banner of the Great Society, Lyndon Johnson declared a war on poverty, and Congress passed numerous measures addressing, among other issues, health care, education, job training, hunger, legal aid, unemployment, housing, civil rights, and voting rights.

It some ways it seemed as though the United States stood at the brink of a major breakthrough in using the government as a force for equality and reform. As Ira Katznelson reports, "For a remarkable moment, the country's domestic politics focused sympathetically and constructively on the least advantaged, and the United States seemed prepared to override its historical reticence in finding a role for the state in mitigation of the distributive patterns of the market."[26] Still, not as much of the progressive potential was realized as

some had hoped. The Great Society proved to be more limited than the New Deal, and President Johnson and the architects of the Great Society's War on Poverty consciously limited what they sought to achieve.

John F. Kennedy and Lyndon Johnson faced a very different political economy than that of the earlier New Deal period. The New Deal emerged out of the ashes of a catastrophic economic collapse, while Johnson's Great Society emerged from conditions of economic prosperity. The opportunity for change came from the fact that the United States was the richest nation in the world, which made continued poverty and denial of basic rights an embarrassment and a threat to claims of moral superiority in the Cold War struggle with the Soviet communists. It seemed as though the United States could easily afford to spread the benefits of prosperity and should do something to follow through on the nation's promise of equality for all. But the continued prosperity of the nation also served as a barrier to reform.

Where Roosevelt had faced a business community on the ropes because of the Depression, in the early 1960s that community was now in ascendance, with its power relatively unquestioned for the moment. Where leaders during the New Deal had at least raised questions concerning the viability of corporate capitalism, the private power of major corporations, and the role of government in stabilizing the economy and empowering citizens, now many of those questions seemed settled. And despite the continuing large role for the national government in stabilizing the nation's economy, neither Kennedy nor Johnson was interested in reviving the debates of the New Deal period or in staking out a challenge to the new dominance of business in American politics. Basing their reform goals on assumptions of economic growth—Kennedy had pushed through a large tax cut to promote economic growth before he suggested any reformist measures—both Kennedy and Johnson counted on American corporations to deliver the growth that would lift Americans out of poverty.

Nonetheless, the resulting government programs did make a difference. Despite continuing conservative assertions that the Great Society's War on Poverty turned out to be a dismal failure, the opposite is true. Katznelson affirms that "the steep decline from the nearly one in five Americans who were poor . . . when the War on Poverty was declared to just over one in ten by 1973 at minimum represents a provocative correlation between governmental efforts and effects." Still, the Vietnam War diverted substantial resources from attempts to combat poverty. The Vietnam War cost $128 billion, while the government committed only $15 billion to fight the War on Poverty, and this amount remained "only 15 percent of what a smaller number of veterans had received under the GI Bill." Still, evident progress was made, as the passage of the 1964 Civil Rights Act and the 1965 Voting Rights Act meant a commitment to more

fully integrate African-Americans into the fabric of American society. But because of the fundamental conservative nature of the antipoverty programs—addressing poverty, unemployment, and inequality not as structural liabilities of the capitalist system and of entrenched racism, but as reflecting a lack of skills of those who were unemployed—progress remained stymied and certain recipients of aid remained stigmatized. A white backlash against welfare state expansions that purportedly favored African-Americans made "welfare" a vilified term and undermined public support for aid to the poor.[27]

It did not seem to matter that whites—and middle class whites at that—had themselves become the prime beneficiaries of the expanded welfare state: "Governmental spending in the welfare sector largely benefited the middle class, not the poor, since Social Security and Medicare received the bulk of governmental funds."[28] Nor did it matter that the bulk of the nation's poor remained white. Already, white rank-and-file union workers bristled at the thought of having to compete for jobs with blacks because of antidiscrimination measures, and union resistance to any real racial equity within their ranks led to serious divisions and lasting weaknesses within the labor movement. Continued racism combined with the decline of jobs and pay during the 1970s to create immense anxieties for the white working class, anxieties that fed blue-collar hostility to the welfare state and to African-American demands for integration.

New Social Regulation and Business Backlash

In the late 1960s and the early 1970s, Congress pursued an aggressive expansion of the regulatory state. As Eisner notes, while Congress had passed only five consumer and health-related laws during the Progressive Era, and eleven during the New Deal, it passed sixty-two during the late 1960s and early 1970s. That legislative output truly was extraordinary. Congress created new agencies, such as the National Highway Traffic Safety Administration (NHTSA), the Consumer Products Safety Commission (CPSC), the Occupational Hazard Safety Administration (OSHA), and the Environmental Protection Agency (EPA). It was not simply the number of laws that was impressive, it was also that this new kind of "social regulation" inserted national authority more deeply into previously sacrosanct corporate decisions, dealing as these laws did with, for example, worker safety, consumer product safety, and air and water pollution. Imposing regulation in these areas meant "a significant diminution of corporate autonomy," alongside new costs associated with running a safer work environment and producing safer goods, as well as doing so in a less polluting manner. What made this great expansion in new regulations possible was a new cadre of entrepreneurial members of Congress, prodded by "a virtual explosion" in

consumer and environmental public interest groups, themselves supported by mobilized middle-class constituencies and major shifts in public opinion as Americans became aware of the seamy side of corporate behavior.[29]

While the War on Poverty, despite its successes, proved to be relatively limited in conception and execution, the new social regulation represented a more direct threat to corporate power and profits. The threat lay in how government now forced companies to account for costs that they had previously dumped on the public sector, including those involving unsafe products and working conditions, air and water pollutants, and toxic wastes. Where the welfare state expansions elicited a growing white middle-class backlash along the way, the regulatory state expansions produced a concerted and full-blown business backlash that transformed the very environment within which the national government went about its business. If Polanyi conceived of the welfare and regulatory states as a reaction to the government's forcibly imposing a free market order that entailed the "running of society as an adjunct to the market," then the business backlash could be thought of as a reaction to that reaction, leading to a concerted effort to turn the clock back on the 1960s—and even the 1930s—governmental expansions.[30]

Reacting to this threat to their profits and power, the American business community managed to overcome its many divisions to wage a two-pronged political and ideological counterattack against the recent regulatory state expansions. Business reinserted itself as a dominant player in national policy discussions, through campaign contributions and aggressive new forms of lobbying activities. As Thomas Edsall finds, by the end of the 1970s, "the business community had achieved virtual dominance of the legislative process in Congress." The specific attacks on the regulatory policies segued quickly into an attack on the role of government more generally, and the larger ideological offensive the business community waged against government served to highlight and magnify their specific grievances, whether against taxes, regulations, or welfare state expenditures. Their profits dropped as the 1970s progressed, and businesses blamed government-protected labor unions, ostensibly exorbitant welfare costs, and strangling regulatory demands. They mobilized to roll back the specific welfare state and regulatory expansions they despised. To do so, they also mobilized a new ideology that blamed government interventionism for all the economic troubles the United States now faced. This was a hardline form of market fundamentalism, and business promoted it with gusto. As Edsall concludes, "During the 1970s, the political wing of the nation's corporate sector staged one of most remarkable campaigns in the pursuit of power in recent history." By the early 1980s, business "had gained a level of influence and leverage approaching that of the boom days of the 1920s," that is, before

the New Deal. For Mark Blyth, the business offensive resulted in a "corporate takeover of [American] democracy."[31]

Business attacks on government were joined by a growing grassroots anti-tax campaign and a backlash against the cultural excesses of the 1960s, which found a focus in the antiabortion movement and the related rise of the Religious Right. These attacks and movements threatened the 1960s' welfare and regulatory expansions and laid the foundation for a growing anti-government mindset among some Americans. Exposure of official lies about American involvement in Vietnam, along with the Watergate scandal and President Richard Nixon's resignation, also eroded the public's faith in government.[32] During the 1970s, a number of changes occurred: economic anxieties increased, public activism decreased or became channeled into new right-wing movements, union power declined, and business became aggressive in blaming government and labor unions for America's worsening economy. The two political parties changed as well, with the Republicans becoming increasingly driven by ideological and cultural concerns, reflecting their business and evangelical religious bases, and the Democrats drifting away from their mass base among working people and toward the corporations and industries they relied on for their campaign funding. These changes would provide an irresistible recipe for a sustained attack on those government programs, instituted from the New Deal to the Great Society, that challenged business power and expanded democracy in the United States.

The Reagan Revolution

White backlash against the welfare state combined with the business community's attack on the regulatory state to set the stage for Ronald Reagan's election in 1980. The 1970s, bedeviled by inflation and unemployment, became a transitional decade, during which conservative forces gained a great deal of momentum. These forces combined to provide Reagan with a narrow victory in the 1980 presidential election. The Reagan revolution consisted of a series of anti-government initiatives that, together, formed the basis for a new and influential agenda—a neoliberal, or new laissez-faire, one that emphasized how free markets, unencumbered by government actions, produce optimal outcomes and maximum freedom for all. Substantial cuts in federal taxes and corresponding cuts to social spending, along with rollbacks of recent regulatory initiatives, marked the Reagan administration's attempts to reduce the government's role in the economy. Reagan even went after the two most important New Deal reform initiatives: he tried—but failed—to terminate Social Security, and he subverted the National Labor Relations Board and its enforcement of Wagner

Act protections for labor organizing. As a result of Reagan's initiatives, Blyth concludes, "labor was reregulated, [while] business was deregulated."[33]

Still, the government continued to grow during Reagan's time in office, as military spending skyrocketed because of a "new Cold War" climate fostered by Reagan himself. The American business community proved to be more than willing to support this kind of government growth: "With virtually all of American business clamoring for an increase in military spending, the [Reagan] Administration responded by initiating the biggest sustained peacetime buildup in U.S. history." This buildup served many business interests by increasing the ability of the United States to "press and defend private American interests in an increasingly volatile world economy." It also served the particular interests of those corporations that produced the weaponry.[34] Large tax cuts, exclusively for the wealthy and for big corporations, combined with increases in military spending to produce the first massive deficits of the postwar years. These deficits were, ironically enough, touted by Republicans, the very ones responsible for the deficits, as further evidence that government was dysfunctional and was itself responsible for the nation's economic problems. Deficits acted as a drag on any kind of innovations that future Democratic presidents might pursue and therefore served a dual purpose—they discredited government, and they acted to stymie possible future governmental expansions.

It is important to remember that the American public remained resistant to Reagan's redirection of government policy. There was no right turn in public opinion that would explain the corresponding turn in public policy. Thomas Ferguson and Joel Rogers explain that "as the rollback in regulation and cutbacks in domestic spending became evident during Reagan's first term, the public increased its support for regulatory and social programs."[35] The economy fractured—the nation's corporations, for example, sought profits in low-wage countries abroad. A definite split reemerged between the mass of Americans and the nation's economic leaders that spelled the end of the business-labor accord of the preceding three decades. Where once the head of General Motors could say to Congress, "I thought what was good for our country was good for General Motors, and vice versa," now it was becoming clear that what was good for major corporations was not good for the nation as a whole, and the public increasingly recognized this fact.

The problem, then, was how to deal with this growing divergence of opinion. Conservative business and political forces responded by simply doubling down on promoting a return to the pre–New Deal tenets of laissez-faire. Through this neoliberal ideology, they denigrated the public sector's contribution to the nation's success and proclaimed that unfettered free markets produced optimum outcomes only if left alone by government dictates. Reagan proved to be the "great communicator" of this new ideology, beginning his

presidency by declaring that "government is not the solution to our problems, government is the problem." The guiding document of Reagan's economic team even pronounced that "the most important cause of our economic problems has been the government itself."[36] Reaganism, as an open attack on certain parts of the government, reflected the new business polemics and a corporate preference for turning back the clock on recent tax, welfare, and regulatory measures. But the economic revival itself was the result of massive government spending on an unprecedented peacetime military buildup, aided by an all-out government and private-sector attack on organized labor. Reagan's open confrontation with labor unions—highlighted by his firing all 11,400 striking air traffic controllers in 1983—sent a clear message to the American business community that they could pressure labor all they wanted. Corporations also exploited their control of jobs and investment to wrest substantial wage and benefit concessions from labor unions, which were now on the ropes.

Despite these concessions by labor unions, corporations increasingly moved American jobs abroad in search of easy profits. Good-paying factory jobs began disappearing, and deindustrialization and outsourcing became a conscious corporate strategy. Deregulation also increased profits, and the deregulation of the banking industry led many companies to shift from the production of goods to financial shenanigans, because the profits were too enticing. But banking deregulation led to the savings and loan scandal of the late 1980s. Bailing out the banks cost the American taxpayer $123.8 billion up front, and it will cost as much as $500 billion over a thirty-year period. All of this was not a reduction in government, but merely a redirection of what government does. Major corporations and the wealthy won, and working people and the unemployed lost. This represented not so much an economic revival as "a new class war," according to Piven and Cloward, in which the national political leadership tilted heavily toward business preferences in order to increase the share of the economy that went to the affluent and to major corporations. As the government backed away from policies designed to help working people weather the storms of economic change, it turned to new policies, such as the drug war, which quadrupled the number of prisoners in the United States. As David Harvey notes, "In the U.S., incarceration became a key state strategy to deal with problems arising among discarded workers and marginalized populations."[37]

As American corporations increasingly sought profits outside of the United States, US leaders promoted free trade as a panacea for America's economic troubles. Under US leadership, neoliberal globalization has come closer to reality as global institutions—such as the International Monetary Fund, the World Bank, and the World Trade Organization—founded and formed under US stewardship, aggressively promoted a more open global trading order. As Polanyi outlined, government creates new market regimes. In this case, the

United States, with the world's largest economy, has created a new global market regime to impose Reaganism, a form of market fundamentalism, on all the world's nations. A race to the bottom ensued, one in which the new global economy replicated, on an international scale, the "privileged position of business" Lindblom has found in the American setting. Each government, including America's, would now compete with one another to gain business investments. Businesses scoured the globe to find those countries with the lowest taxes, lowest labor costs, and fewest regulations.

Conclusion

The 2008 crisis found its center in Wall Street banking circles. That crisis is directly related to the unwinding of Roosevelt's Depression-era banking regulations, designed to prevent another crash like the one in 1929. These banking regulations worked as intended for over seven decades until, in 1999, Congress overturned the Glass-Steagall Act with the Gramm-Leach-Bliley Act, initiating another rollback of New Deal–era regulatory tools. It took only eight years for the nation—and the world—to suffer through another banking and economic crisis as bad as that of the Great Crash of 1929. What prevented the 2008 crisis from being a complete replay of the Great Depression—or an even worse situation, considering the much larger degree of global economic integration today—was the welfare state safety net that ameliorated the plight of the millions put out of work, as well as the aggressive bailouts of the biggest banks, significant parts of the auto industry, and even individual states. In the wake of the 2008 economic collapse, the government seemed to be everywhere—and it was!—but almost immediately, conservative forces regrouped to blame the crisis on government policies and to reassert neoliberal orthodoxy.

The 2008 crisis displayed fully the economic disasters that await when government is unable to effectively regulate private market behavior. And it demonstrated the degree to which government props up the economy in good times and in bad. But this economic collapse did nothing to adjust the beliefs of the neoliberal faithful. As is the case with those who deny the impact of climate change, no disconfirming evidence will sway true believers from worshiping at the altar of unregulated free markets. This is the defining test of any ideology: in the face of direct counterevidence, do adherents remain loyal to it? Not only has the 2008 economic collapse not changed many minds, but the stalwart defenders of free market ideology seem just as committed and just as able to dominate debates as they were before the collapse. Market fundamentalism continues to drive discussions about the very role of government in our society and economy, as well as policy discussions concerning taxes, regulation, and the welfare state. It seems to have established the new commonsense wisdom of the

political class to a large degree. It even appears to have affected the common sense of many Americans, who have been socialized by anti-government rhetoric to have an ambivalent and confused relationship toward government today. Our leaders seem incapable of resisting the grip of this ideology, despite the overwhelming evidence of its failures. Even many Democrats no longer have the language of, orientation to, or simply any connection with the economic majority in order to engage in a full-throated defense of the role of government in improving people's lives. Nonetheless, the 2016 presidential bid of Bernie Sanders forced Democrats to confront and embrace their legacy with regard to those government programs that serve a broad swath of Americans.

Sanders demonstrated that defending important parts of what government could offer gave Democrats a way to challenge those who demonize the role of government and advocate surrendering to market fundamentalism. Still, few are willing to offer a vigorous defense of what government does. This book is designed to counter the ideas behind market fundamentalism—that the government contributes little to the economy's, and the nation's, success—and the one-sided, caricatured disparagement of government that all too easily dominates much of the political debate today. We do so by offering a primer on the many different things that government does, to remind interested citizens of the extremely important and necessary role government has played—and continues to play—in stabilizing and driving America's political economy. We also want to alert readers to the very real threats that some kinds of expanding government power present. American government is not a single, coherent enterprise that is easy to like or dislike as a whole. Because of its very complexity, and because most Americans don't really understand what their government does, simplistic thinking about the government too often wins out. Insufficient understanding fuels the triumph of ideology. The chapters that follow are all about offering a corrective to simplistic thinking about our government.

Notes

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2. Ibid., 758.

3. Max Edling, *A Revolution in Favor of Government* (New York: Oxford University Press, 2003), 4.

4. David Moss, *When All Else Fails: Government as the Ultimate Risk Manager* (Cambridge, MA: Harvard University Press, 2002), 5; J. Willard Hurst, *Law and the Conditions of Freedom in the Nineteenth-Century United States* (Madison: University of Wisconsin Press, 1956), quotes at 7, 11.

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6. Balogh, *Government Out of Sight*, 13; Richard John, *Spreading the News* (Cambridge, MA: Harvard University Press, 1995), 4–5, 51.

7. Marc Allen Eisner, *The State in the American Political Economy* (New York: Prentice-Hall, 1994), 86.

8. Desmond King and Robert Lieberman, "Ironies of State Building," *World Politics* 61, no. 3 (July 2009), quotes at 571, 549; Michael Mann, *The Rise of Classes and Nation-States, 1760–1914*, vol. 2 in *The Sources of Social Power* (New York: Cambridge University Press, 1993), 2:57.

9. Balogh, *Government Out of Sight*, quotes at 379, 12 (emphasis in original).

10. Eisner, *The State*, 95.

11. Samuel P. Hays, *The Response to Industrialization, 1885–1914* (Chicago: University of Chicago Press, 1995), 141–42, quote at 140.

12. Stephen Skowronek, *Building a New American State: The Expansion of National Administrative Capacities, 1877–1920* (New York: Cambridge University Press, 1982), 10.

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14. E. E. Schattschneider, *The Semisovereign People: A Realist's View of Democracy in America* (Hinsdale, IL: Dryden Press, 1960), 84.

15. William E. Leuchtenberg, *Franklin D. Roosevelt and the New Deal* (New York: Harper, 1963), 22; Richard Hofstadter, *The Age of Reform* (New York: Vintage, 1960), 302.

16. Frances Fox Piven and Richard Cloward, *New Class War* (New York: Pantheon, 1982), chapter 4.

17. Frances Fox Piven and Richard Cloward, *Why Americans Still Don't Vote* (Boston: Beacon, 2000), 98; C. Wright Mills, *The Power Elite* (New York: Oxford University Press, 1959), 273; Schattschneider, *Semisovereign People*, 84.

18. The classic analysis of this legislation is Stephen K. Bailey, *Congress Makes a Law* (New York: Columbia University Press, 1950).

19. Vogel, "Why Businessmen Distrust," 63.

20. Ibid.

21. H. W. Brands, *A Traitor to His Class: The Privileged Life and Radical Presidency of Franklin Delano Roosevelt* (New York: Doubleday, 2008), 281; Benjamin Friedman, *The Moral Consequences of Economic Growth* (New York: Vintage, 2006), 173.

22. Schattschneider, *Semisovereign People*, 87.

23. See Brian Waddell, *Towards the National Security State* (Westport, CT: Praeger, 2007).

24. Schattschneider, *Semisovereign People*, vi.

25. Michael Mann, *Globalizations, 1945–2011*, vol. 4 in *The Sources of Social Power* (New York: Cambridge University Press, 2013), quote at 4:47, see also 4:46.

26. Ira Katznelson, "Was the Great Society a Lost Opportunity?," in Steve Fraser and Gary Gerstle (eds.), *The Rise and Fall of the New Deal Order, 1930–1980* (Princeton, NJ: Princeton University Press, 1989), 196.

27. Ibid., quotes at 197; Mann, *Globalizations*, 4:63, 64. See also Michael Brown, *Race, Money, and the American Welfare State* (Ithaca, NY: Cornell University Press, 1999), 334.

28. William C. Berman, *America's Right Turn: From Nixon to Clinton*, 2nd ed. (Baltimore: Johns Hopkins University Press, 1998), 22.

29. Marc Allen Eisner, *Regulatory Politics in Transition* (Baltimore: Johns Hopkins University Press, 1995), quotes at 120, 122.

30. Karl Polanyi, *The Great Transformation* (Boston: Beacon Press, 1957), 57. See also Mark Blyth, *Great Transformations* (New York: Cambridge University Press, 2002), 6.

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33. Blyth, *Great Transformations*, 183.

34. Thomas Ferguson and Joel Rogers, *Right Turn* (New York: Hill & Wang, 1986), 124.

35. Ibid., 15.

36. Blyth, *Great Transformations*, 173.

37. David Harvey, *A Brief History of Neoliberalism* (New York: Oxford University Press, 2009), 77. Berman, *America's Right Turn*, 124; Piven and Cloward, *New Class War*.

The Tax State

Just as war has been central to making the modern state, war has been largely responsible for transforming national tax systems. Modern European states grew in order to develop armies and the capacity to wage war, and a state's capacity for war depended on its ability to "extract revenue" from its people. Thus state building, war, and tax capacity were all part of the same pattern of development, and the American state has followed a similar path. Yet as state functions have become layered upon war making, taxes have become much more than the price of protection. While pre-democratic European states extracted taxes from its people without their consent, in modern democracies taxes are bound together with the rights, obligations, and benefits of citizenship. Taxes support popular programs, such as Social Security and Medicare, with the single largest component of the federal budget going toward the welfare state. While taxes are the price we pay for government, they represent much more. As US Supreme Court Justice Oliver Wendell Holmes, astutely observed in 1927, "Taxes are what we pay for civilized society."[1] A more pointed aspect of tax politics is that it resembles class politics, since who pays—and how much—imposes a price tag on each of society's economic groups. Because tax capacity is also the foundation for what government can do, battles in the United States over tax policy have become proxy battles over government's reach.

Trillions of dollars in tax revenue are collected each year, with the combined total of all national, state, and local taxes reaching over $5 trillion. Despite the repeated claims that Americans hate taxes, or that our political institutions limit tax capacity, the US national government alone raises over $3 trillion each year in tax revenue. It is also able to borrow large sums at low interest rates. In recent years, the United States has been able to simultaneously finance the most expensive military the world has ever seen, fight two wars at once, and fund a modern welfare state, not to mention myriad other governmental activities. As Sheldon Pollack argues, "Today, the United States provides the foremost example of how fiscal efficiency and state power can be effectively combined."[2] The power, reach, and responsibilities of the US government would not be possible without its powerful tax-raising capacity.

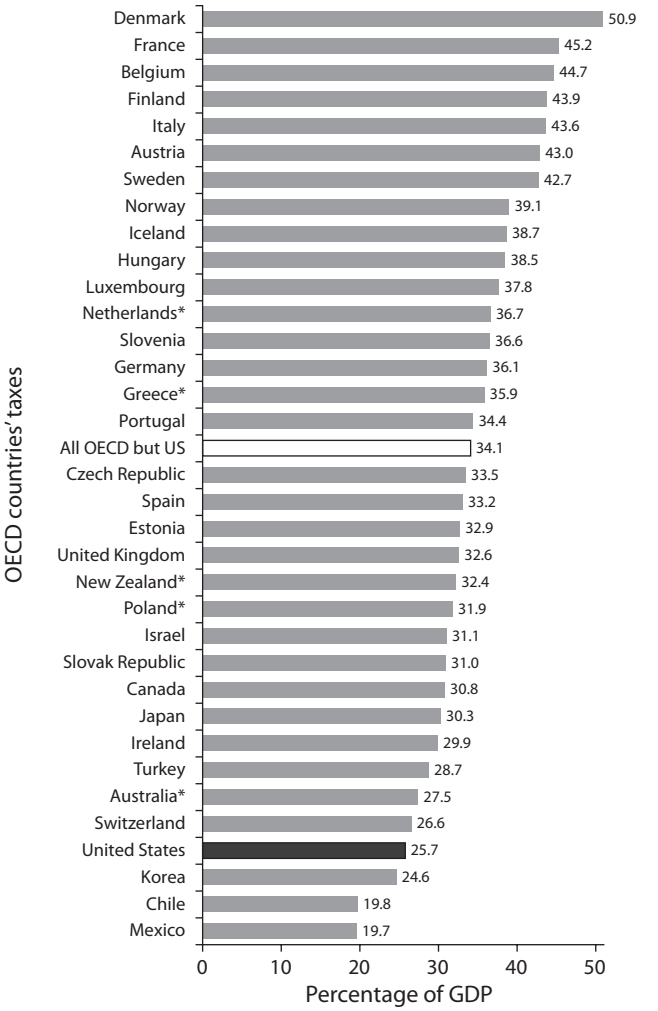
Over the past few decades, conservatives, who now dominate the Republican Party, have focused on cutting taxes, in order to limit what government can do. In a knee-jerk fashion, most Republican members of Congress oppose any new taxes and seek to roll back existing ones. Elite groups and wealthy donors ensure that Republicans seeking office oppose tax increases. Since a lack of revenue weakens the government's ability to provide services, attacking the tax system has become an indirect means of undercutting the fiscal viability of popular programs, such as Social Security, Medicare, or environmental protection. Budget deficits, it is hoped, will force broad program cuts and insulate those making the cuts from voter punishment. At the same time, undermining the government's capacity to raise revenue lessens the likelihood of implementing new programs. This strategy is known as *starve the beast*, a popular metaphor for using tax cuts to control government spending. Meanwhile, tax cutting has been structured to reward the wealthy and big business.

Tax cuts have become a Republican panacea, pushed regardless of their economic circumstances or fiscal impact. During the past few decades, Republicans have proposed cutting taxes to stimulate the economy and supposedly increase tax revenue (supply-side economics), to return surpluses to taxpayers, or simply to starve the beast. The long-term conservative strategy of limiting the state's tax capacity stands in stark contrast to centuries of modern state development. Ruling regimes have sought to increase revenue in order to carry out various state functions.

Despite the heated rhetoric so often heard today, and contrary to much popular opinion, taxes in the United States are lower than in almost all the nations of the advanced industrial world (see the graph below). At the same time, the top tax rates in the United States are lower those than in twenty Organisation for Economic Co-operation and Development (OECD) nations.

The Goals of Tax Policy

Modern governments raise tax revenue from four sources: personal income, corporate profits, general consumption, and property. Federal revenues come from among these types of taxes. The most obvious goal of taxes is to raise funds, but tax policy also serves a broader array of goals: "raising revenue, redistributing income, encouraging savings, stimulating growth, penalizing consumption, directing investment, and rewarding certain values while penalizing others."[3] Incentives in the tax code—deductions, exemptions, and credits—seek to encourage certain activities, such as adding energy efficiency to existing homes, or to subsidize other activities, such as charitable deductions or employer-provided health insurance. When exemptions, deductions, or credits



OECD countries' taxes as a share of GDP (in percentages) in 2014.

OECD data, http://stats.oecd.org; US data from the US Treasury and US Census, 2016, Citizens for Tax Justice, http://ctj.org/.

*Data from 2013 is used for Australia, Greece, the Netherlands, New Zealand, and Poland, due to lack of more recent data.

are built into the tax code to lower taxes for certain types of activities, they are known as *tax expenditures*. Taxes can also serve to discourage certain actions, such as attempting to restrain smoking by adding to the price of cigarettes. From the beginning of the nation, taxation has been used to shape the economy and regulate moral behavior.

The History of Tax Systems in the United States

War and national emergencies have been pivot points in transforming the nation's tax system. During each crisis—the Civil War, World War I, World War II, and the Great Depression in the 1930s—a new system of taxation was implemented.[4] Modern wars transformed the tax system, because they required a massive mobilization of personnel and materials. As the nation's first modern war, the Civil War overwhelmed the capacity of the revenue system that was in place and led to America's first income tax. Previously, federal revenues came from tariffs (taxes on imports) and excise taxes (taxes on specific goods). Even if the rates had been raised, these types of taxes simply could not generate enough revenue for the Union to pay for the war. A flat income tax that only touched the top 10 percent of Union households was implemented, and it was allowed to expire when the war was over.

After the Civil War, high tariffs on manufactured goods and excise taxes on alcohol, tobacco, and a few luxury items funded the federal government for the next fifty years. High tariffs were not simply a way to raise revenue. They were also used as a tool to protect domestic industry from foreign competition. In other words, tariffs were the developmental state in action. Tariff rates—rarely below 40 percent and sometimes as high as 100 percent—were extremely detailed, specifying different rates for different products. Business leaders liked tariffs, as did many workers, because they discouraged the purchase of foreign-made goods. But farmers protested the use of tariffs because, as consumers, it forced them to pay higher prices. As a growing populist movement gathered steam, targeting big business's hold on the nation, so did support for the reinstitution of an income tax. Advocates of a progressive income tax believed it addressed the growing imbalances in wealth and power, which was seen as corrupting the nation, by alleviating the tax burden on average Americans and forcing the wealthy to pay more.

By the 1890s, a number of factors combined to topple the tariff regime. As tax historian Ajay Mehrotra notes, "a consistent federal surplus, growing anxiety about the corrupt liberalization of Civil War pensions, a mature industrial economy, and the increasing traction of free trade ideas" each undercut support for tariffs, but the Panic of 1893 fueled the Populist rage that was necessary to pass an income tax bill.[5] In 1894, Congress reinstituted an income tax on the top 2 percent of income earners, with a 2 percent tax on incomes above $4,000. Opponents of the tax immediately turned to the US Supreme Court for relief, and the next year a conservative Supreme Court struck down the law. Although the Constitution granted the federal government the power to tax, direct taxes were prohibited. Federal taxation had to be allocated according to a state's population, not from the income derived from property. Reversing

over one hundred years of precedent, as well as a decision made only fourteen years earlier (in 1881), the court ruled that income taxes were a direct tax and therefore unconstitutional.[6]

The court's decision sparked outrage across the nation. One of the justices in the majority wrote that the income tax was a form of class warfare: "The present assault upon capital is but the beginning. It will be but the stepping-stone to others, larger and more sweeping, till our political contests will become a war of the poor against the rich; a war constantly growing in intensity and bitterness."[7] The *New York Tribune* echoed the court's view: "Thanks to the court, our government is not to be dragged into communistic warfare against the rights of property and the rewards of industry." Critics of the court's decision were equally vehement. An editorial in the *New York World*, for example, stated: "The overthrow of the income tax is the triumph of selfishness over patriotism. Great and rich corporations, by hiring the ablest lawyers in the land and fighting against a petty tax . . . have secured the exemption of wealth from paying its just share toward the support of the government that protects it." The *St. Louis Post Dispatch* was even more blunt: "Today's decision shows that the corporations and the plutocrats are . . . securely entrenched in the Supreme Court."[8]

The decision sparked widespread political mobilization among the nation's Populists. In the 1896 presidential election, the Democrats, now aligned with the Populists, became the first major party to endorse the income tax. But this fateful election turned on other issues, and the resurrection of the sectional cleavage of the Civil War brought to power conservatives in each region. Prospects for an income tax dwindled. Nevertheless, support continued to increase as the Progressive wing of the Republican Party grew. A Progressive coalition, with supporters in each party, was able to pass a constitutional amendment in 1913 to overcome the US Supreme Court's ruling. Once the amendment was ratified, Congress passed an income tax bill, though it was smaller than both the Civil War tax and the bill passed in 1894. Yet the passage of the Sixteenth Amendment, along with the subsequent income tax bill, was a victory for those who sought to address the growing imbalance in the power of the wealthy and strengthen the fiscal capacity of government.

The battle over an income tax symbolized the broader issue of a citizen's relationship to government. At the time, it was seen as reflecting the long-standing tension between two strands of democratic thought: Lockean individualism, and classic republicanism (civic humanism). Modern liberalism, expressed most clearly by British thinker John Locke, emphasized the rights of the individual. Protecting the pursuit of wealth required limitations on the power to tax. In contrast, the ideals of classical republicanism, reaching back to ancient Greece, emphasized the communal responsibilities of citizenship. In this view, citizens were part of a community organized to achieve broader goals

than the protection of individual property rights. Paying taxes was deemed a normal obligation of citizenship, and citizens were seen as much more than simply a collection of separate and isolated individual property owners. Instead, they were viewed as members of a community with obligations to contribute to its well-being. Progressive Era tax reformers were able to weaken the Lockean notion of possessive individualism, at least insofar as a justification for the system of taxation that was in place. They were also able to refute a benefits theory of taxation, where one's obligation to pay taxes was limited to the benefits one received from living within a community. From this perspective, taxes were the equivalent of an economic transaction. Progressive Era reformers rejected the view that the state was merely a protector of private rights, or that taxes were the price paid for enjoying the benefits of society. For example, Edwin R. A. Seligman, one of the leading Progressive Era tax reformers, attacked the benefits theory of taxation:

> In a civilized society the state is as necessary to the individual as the air he breathes; unless he reverts to stateless savagery and anarchy he cannot live beyond its confines. His every action is conditioned by the fact of its existence. He does not choose the state, but is born into it; it is interwoven with the very fibers of his being; nay in the last resort, he gives to it his very life. To say that he supports the state only because it benefits him is a narrow and selfish doctrine. We pay taxes not because we get benefits from the state, but because it is as much our duty to support the state as to support ourselves or our family; because, in short, the state is an integral part of us.[9]

For reformers such as Seligman, an ability to pay should structure the tax system. Such a system would address growing inequality and the disproportionate burden of tariffs and excise taxes. According to Mehrotra, for Progressive Era reformers, the income tax would transform "the relationship between citizens and the state." They believed citizens would embrace the growing powers of the federal government to spur economic development and solve social problems: "Solidarity, ethical duty, and political consciousness, in sum, would be embodied in the concept of direct and progressive taxation."[10] Even Adam Smith, typically credited with providing the intellectual justification for a market economy and limited government, wrote in *The Wealth of Nations* in 1776 that taxes should by based on the ability to pay: "The subjects of every state ought to contribute toward the support of the government as nearly as possible in proportion to their respective abilities."[11]

Congress set a modest income tax rate of between 1 and 7 percent on individual and corporate incomes, and this tax only applied to the top 2 percent of the population. Despite the limited reach of the new income tax, it provided

the foundation for a modern fiscal system, one that would soon be expanded with the US entrance into World War I.

WORLD WAR I

Financing World War I dwarfed all previous demands for revenue. The cost of the first full year of the war alone ($26 billion) exceeded the total cost of the federal government from 1791 through 1917.[12] "Pressures of fighting a modern war," the tax historian W. Elliot Brownlee argues, "coincided with powerful demands to break corporate privilege."[13] Congress passed wartime excess profits taxes and munitions taxes so businesses would not unduly profit from the war. Congress also raised rates on income and profits and instituted a permanent estate tax on large inherited wealth. (Estates are the value of all of a person's assets at the time of his or her death.) Within just six years, the top rates had gone from 7 to 77 percent, and those required to pay an income tax increased from 2 to 20 percent of the population. Before the war, excise taxes and tariffs accounted for over 90 percent of federal revenue. By 1918, the income tax and the excess profits tax generated 63.1 percent of federal revenue; tariffs and excise taxes now accounted for only 28.7 percent.[14] This turnaround meant that government was now financed primarily by a progressive tax (where those with lower incomes pay a lesser fraction of their income in taxes than those with higher incomes) on income and profits, as opposed to a regressive tax (where those with lower incomes pay a greater fraction of their income in taxes than those with higher incomes) on consumption. A modern tax system was now in place.

With the end of the war, Republicans returned to power for the next twelve years and cut the top income tax rates from 77 to 24 percent. The excess profits tax was repealed and deductions were added to the tax code, including special treatment for capital gains (the profits from selling real estate, stocks, and other investments). Andrew Mellon, the treasury secretary from 1921 to 1932 (serving under Presidents Harding, Coolidge, and Hoover) and one of the wealthiest men in the nation, justified these reductions as necessary to stimulate the economy by freeing up money for private investment, a concept that was a forerunner of supply-side economics. Although Mellon also sought to turn back the growth of government, he rebuffed calls to abolish the income tax. Some progressive taxation, he argued, would demonstrate a level of civic responsibility that would blunt calls for soaking the rich. "Thus," Brownlee concludes, "Mellon helped to preserve a revenue system that, even in its weakened form, advanced social justice."[15]

THE GREAT DEPRESSION

Although Franklin D. Roosevelt was adept at invoking the language of the common man, railing against "economic royalists and malefactors of wealth," there was little redistribution of wealth during the New Deal. On the issue of taxes, there was symbolic rhetoric and narrow gestures, as opposed to substantive change.[16] For example, while the top tax rates were raised to 79 percent on incomes above $5 million, for three years this rate only affected one person in the nation: John D. Rockefeller. Corporate taxes were raised from a flat rate of 12.5 percent to a graduated rate of 15 percent. The most significant tax development during the domestic phase of the New Deal was the Federal Insurance Contributions Act (FICA), which brought about the advent of the Social Security payroll tax. The new system of old age pensions was financed by a separate new tax, a flat rate of 2 percent (split between employee and employer) levied on the first $3,000 of income from wages or salaries. This new tax was regressive, because most of the income of the wealthy was untaxed, while average Americans paid the new tax on the bulk, if not all, of their earnings. As a flat tax, the same rate was applied, regardless of how much one earned from wages or a salary. With a ceiling on taxable income, it meant—and still means today—that income above that ceiling is not taxed, so whether one earned $3,000 or $3,000,000, the same dollar amount in payroll taxes was due. Roosevelt saw the tax as resembling a premium, yielding benefits (just like an investment would). He also believed that structuring the payroll tax this way protected it from attack by conservatives. "We put those payroll contributions there," FDR recalled in 1941, "so as to give the contributors a legal, moral, and political right to collect their pensions and their unemployment benefits. With those taxes in there, no damn politician can ever scrap my social security program. Those taxes aren't a matter of economics, they're straight politics."[17] In any case, each of these changes was minor, compared with the changes in tax policy during World War II.

WORLD WAR II

Few Americans paid the progressive income tax that was in place before World War II. In 1939, less than 5 percent of the public earned enough money to pay federal income taxes, and almost all federal income tax revenue was paid by the very wealthy. The wartime need for revenue, however, led to a profound and fundamental transformation of the tax system. By the end of the war, almost 90 percent of the labor force submitted tax returns, and approximately 60 percent paid federal income taxes. Withholding taxes (automatic deductions made on each paycheck) were also put in place. Previously, each taxpayer paid

his or her total tax bill at the end of the year. As a result of automatic deductions, Americans quickly became familiar with the notion of take-home pay. With these changes, tax revenue shot up, going from $2.2 billion in 1939 to $35.1 billion in 1945, and the share of all government revenue (local, state, and federal) that came from federal income taxes increased from 16 percent in 1940 to over 51 percent by 1950.

A massive public relations campaign was assembled to explain the new system to average Americans. Much of this campaign concentrated on showing the link between the payment of taxes and the fight against Fascism. Other messages concentrated on explaining how to fill out tax return forms. Radio announcements, movie newsreels, short films, speeches before local civic groups, and pamphlets were used to build support for mass taxation. Nothing less than freedom and democracy was at stake, it was argued; hence the popular slogan of the time: "Taxes to beat the Axis." While straightforward messages by government officials were common, celebrities, entertainment programs, songs, and even cartoon figures were utilized to spread the word. Irving Berlin, who wrote "God Bless America" and "I'm Dreaming of a White Christmas," was commissioned by the Treasury Department to write a song in support of the tax system. Entitled "I Paid My Tax Today," it was recorded by a number of popular singers. Radio stations throughout the nation broadcast it to millions. The lyrics' first refrain linked the war, the transformation of income tax from a class tax to a mass tax, and a sense of patriotism.

> I paid my income tax today
> I never felt so proud before
> To be right there with the millions more
> Who paid their income tax today
> I'm squared up with the U.S.A.
> See those bombers in the sky?
> Rockefeller helped build 'em, so did I
> I paid my income tax today

Even Donald Duck was enlisted in this effort. Walt Disney produced an animated short film in support of paying taxes. This film alone was seen by 32 million people in 12,000 theaters in early 1942.[18]

THE POSTWAR ERA

By the end of the war, taxes became an accepted part of the duties of citizenship. The new system financed a transformed national government, with expansive new responsibilities. No doubt popular support for World War II and the economic prosperity that followed were important to the acceptance of

this system. For the first time since the late nineteenth century, Democrats and Republicans in Congress accepted the basic outlines of the tax system. It contained three elements: (1) a progressive, mass-based personal income tax (the top marginal tax was over 90 percent for those whose incomes were in the top 1%); (2) a flat tax on corporate profits; and (3) a regressive social insurance payroll tax. Republicans came to accept higher taxes and concentrated on fiscal orthodoxy, with repeated, yet tepid, calls for balancing the budget. Democrats largely jettisoned the use of class-based rhetoric concerning the redistribution of wealth. Thus major controversies over tax policy were muted during the 1950s. Progressive income tax rates remained, although much of the impact of the high rates was undercut through the use of exemptions and deductions, in other words, loopholes.

The post–World War II tax system was on a different path than that of other advanced industrial countries. To begin with, the United States had higher marginal income tax rates than high-tax social democracies, such as Sweden. In addition, the United States did not have a national sales tax. European welfare states, in contrast, came to rely on national sales taxes, which are regressive (those with lower incomes spend a greater percentage of their income on the necessities of life) and less visible, to generate revenue to fund more-generous welfare state programs. The United States' reliance on more-visible income and payroll taxes, some scholars have argued, has undercut support for the welfare state, because their visibility makes them an easy target for conservative opponents. For example, each year tax day (April 15) has become a symbol of "Big Government." Thus progressive taxation appears not to be the route to an extensive welfare state. Several studies have shown that welfare state programs are smaller where taxes are most progressive.[19]

TAX POLICY AS A MACROECONOMIC STIMULUS

By the time John F. Kennedy was elected president, there was a growing understanding of how to use fiscal policy (government spending) to stimulate the economy. As the economy faltered early in his presidency, he faced two broad choices, each of which involved deficit spending: increase government spending, or cut taxes. Liberals wanted more government spending, while conservatives preferred tax cuts. To build a majority coalition in Congress, Kennedy proposed tax cuts, in order to bring together those who sought some sort of stimulus with those who simply supported tax cuts. Because most Republicans still embraced the fiscal orthodoxy of balanced budgets, Kennedy's proposal seemed reckless, since tax cuts, unaccompanied by spending cuts, would lead to deficits. As a result, the overwhelming majority of Republican members of the House of Representatives voted against the Kennedy

tax cuts—something that today would be the equivalent of a man-bites-dog story.

Top tax rates were significantly reduced, dropping from 91 to 70 percent, while the rates for lower-income Americans saw small reductions. For the rest of the 1960s, income tax rates remained the same. President Johnson, however, sought a payroll tax increase for Social Security, which was raised from 6 percent on the first $4,800 in 1960 to 8.4 percent on the first $7,800 in 1969. Meanwhile, with the advent of Medicare in 1965, another separate payroll tax was implemented. At first the rate was set at 0.7 percent, but it rose to 1.2 percent by 1968.

THE ANTITAX ERA

Economic stagnation in the 1970s—with high inflation and high unemployment occurring at the same time—pushed tax policy to the center stage of national politics. As home values surged in California, grassroots tax revolts spread, due to escalating property taxes. Meanwhile, throughout the nation, inflation pushed up prices and wages. As a result, income tax bills grew, due to "bracket creep." Even though purchasing power remained the same, or even fell, wage earners were in a higher tax bracket. Ronald Reagan's 1980 campaign for the presidency capitalized on this antitax sentiment, and he hammered home the need to cut taxes in virtually every speech he made.[20] The Reagan administration's antitax message represented a turning point in tax policy. Previously, cutting taxes attracted support from those who either simply did not like paying for government as a general principle, or who did not see how they benefited from government. At other times, cutting taxes was seen as a way to stimulate the economy. Now, cutting taxes attracted those who were angry at government and at the stagnant economy. Confidence in government plummeted as the Watergate scandal, the Vietnam War, and the nation's economic woes combined to sour public opinion. Politicians proposing tax cuts could at least offer something to those discontented with government, as well as gain the votes of those who would directly benefit from lower taxes.

To reverse the nation's economic slide, Reagan offered a seemingly new solution, supply-side economics. Its premise was simple: to stimulate the economy, cut taxes. Supply-siders argued counterintuitively that instead of creating a deficit, tax cuts for business and upper-income earners would result in new investment, leading to business expansion and new jobs. The new wrinkle of supply-side economics was its claim that with more and more workers employed, revenues would increase, despite tax cuts. In the complicated world of macroeconomics, Reagan seemed to offer a painless solution to the nation's economic woes, since tax cuts would magically pay for themselves. Neverthe-

less, this position split many within the Republican Party. Traditional conservatives opposed tax cutting that would result in deficits. Without spending cuts, it was fiscally irresponsible—and ridiculous—to contend that cutting taxes would lead to more government revenue. During the 1980 Republican primaries, George H. W. Bush, one of Reagan's opponents in that contest, described Reagan's position as "voodoo economics."

After Reagan's presidential victory, Congress got to work on cutting taxes. To their delight, influential groups seized the opportunity to carve up the tax code. David Stockman, Reagan's director of the White House Office of Management and Budget, went so far as to describe the process as one in which "the hogs were really feeding. The greed level, the level of opportunism, was just out of control."[21] Tax rates across the board were cut, but, Stockman admitted, these cuts were actually a Trojan horse, with the real goal simply to bring down the top tax rate. Supply-side economics, he said, was nothing more than old-fashioned trickle-down economics, dressed up for public relations purposes. *Trickle-down economics* was the term used to describe the practice of showering the wealthy with tax benefits, in the hope that they would invest their money, and the benefits from this anticipated job growth would trickle down to average Americans.

Meanwhile, there was a growing awareness among many Republicans that tax cuts could serve another, more radical goal. By cutting government revenue, the resulting deficits acted as a brake on new government spending. Better yet, the fiscal imbalances that resulted from tax cuts could also lead to cuts in existing popular programs. Throughout the presidential campaign and continuing during his presidency, Reagan compared the problem of too much government spending to a child spending too much of his or her parent's money: "We can lecture our children about extravagance until we run out of voice and breath. Or we can cure their extravagance by simply reducing their allowance." Without using the phrase, Reagan was invoking a starve-the-beast strategy, first mentioned by an administration official in a 1985 *Wall Street Journal* article. This strategy subsequently became a bedrock ideological principle within the Republican Party.[22]

Overall, the 1981 tax cuts, the largest in American history as a percentage of gross domestic product (GDP), took a significant bite out of the progressivity of federal income taxes. What made it "historically unique" at the time, John Witte noted, was its "overwhelming deference to business and upper-income savings groups."[23] Income tax rates were indexed for inflation; over three years, they were cut by 5, 10, and another 10 percent. In addition, the top rates were slashed, from 70 to 50 percent. While the wealthy benefited the most, among the wealthy, preferential treatment was given to investors, with the capital gains tax lowered from 28 to 20 percent. This change meant that for top income earners,

there was a difference of as much as 30 percentage points between the tax rates on the profits from financial investments, such as stocks, compared with the tax rate on wages and salaries. Simply put, investors were taxed at a lower rate than workers. Other provisions of the Reagan tax cuts granted businesses a range of benefits worth tens of billions of dollars. In a truly creative act of accounting known as safe-harbor leasing, Congress allowed companies that were losing money, and therefore had no taxable or net income, to sell their tax breaks to profit-making companies, so these latter companies could apply the "unused" tax breaks as a means of lowering their own taxes.[24]

As a result, Ford Motor Company, for example, sold $1 billion in tax credits to IBM for $100 million. General Electric (GE) bought $1.5 billion worth of credits from nine companies in 1981, enabling that corporate giant to receive about a $100 million tax rebate, even though it earned $2.67 billion in actual profits. Press accounts describing the selling of tax breaks fueled a backlash, forcing Congress to restrict this practice the following year. Yet the corporate tax bonanza continued. Coupled with other benefits built into the 1981 tax law, GE was able to earn $6.5 billion in profits between 1981 and 1983 without paying anything in corporate taxes. Beyond this, it received $283 million in rebates. GE was not alone in this regard. AT&T earned almost $25 billion in profits between 1982 and 1985 and received $635 million in tax rebates.[25] Meanwhile, the official tax rate on such large corporations at that time was 46 percent. By 1984, the annual reports of 275 major and profitable corporations, which accounted for more than one-third of all corporate profits, revealed that 129 either paid no federal income tax or received a rebate in at least one of the years between 1981 and 1984. These same 129 companies earned $66.5 billion in profits, but instead of paying $30.6 billion in income taxes, which would have been due at the normal corporate tax rate, they received $6.4 billion in tax rebates.[26] Corporate tax payments as a percentage of the economy (i.e., of GDP) sunk to their lowest level ever; in 1983, they reached 1.1 percent of GDP, which accounted for 6.2 percent of federal revenues.

Contrary to the promises of supply-side economics, the deficit did not shrink. Instead, it grew to historic levels. None of this was surprising. Research has repeatedly shown that there is no correlation between tax levels paid and business investment. In other words, tax cuts do not pay for themselves. At the same time, according to numerous studies comparing nations, there is no correlation between a nation's tax rates and its economic growth.[27] Moreover, our own country's history should have been sufficient to expose the fallacy of supply-side economics. The fastest periods of American economic growth occurred when top tax rates were at their highest.

While the cut in personal income taxes lowered taxes for most people, a crisis in the Social Security system led to tax increases that wiped out the tax

cuts for most people. In 1983, Congress raised the payroll tax, levied on wages only, both to cover a projected shortfall in the Social Security system and to begin saving for baby boomers' retirements, two decades away. Rates were increased from 10.8 percent to 12.4 percent, phased in over several years, and the retirement age was raised. The ceiling on taxable wages was raised and indexed to a cost-of-living formula, so it would automatically go up as the cost of living rose. By the end of the 1980s, most people paid more in overall federal taxes, despite the Reagan cuts in income taxes, due to the increase in payroll taxes.

Throughout the early to mid-1980s, Congress piled tax break upon tax break for businesses and the wealthy; by 1986, these breaks were equal to half of total federal revenues collected.[28] Reformers from both parties pushed for a massive overhaul of the tax code. Passed in 1986, it was described at the time as the most sweeping tax reform legislation since the development of the federal income tax. With the goal of being revenue neutral (neither raising nor lowering overall revenues), income tax rates were reduced from fifteen different marginal brackets, ranging from 11 to 50 percent, to just two marginal rates, 15 and 28 percent. Capital gains were now taxed at the same rate as regular income. The 1986 law closed numerous deductions, exemptions, and loopholes. It provided tax reductions for most Americans, with only those in the top 10 percent paying more. It also prevented many major corporations from avoiding paying taxes. Still, tax loopholes were not abolished. A large number of major corporations succeeded in getting language inserted into the final legislation exempting or limiting their tax liability. These companies, instead of being named directly in the bill, were merely referred to obliquely, by actions that only their own executives would be aware of, such as the dates of board meetings and amounts spent on particular projects. By not explicitly naming the beneficiaries of these tax breaks, it was almost impossible to trace what had gone on behind the scenes. When probed about the details, the tax-writing committee's members and staffs were not forthcoming, either.[29]

Despite the image of the 1980s as a decade of tax and spending cuts, with Ronald Reagan depicted as the premier tax cutter in American history, the actual fiscal history of the Reagan years was quite different. Yes, there were tax cuts, but there were also tax increases. There were some program cuts (e.g., discretionary welfare and regulatory programs), but other programs were increased (e.g., the military). The budget deficit did not shrink, it swelled. By the time Reagan left office, he had signed eleven tax increases into law, compared with four tax decreases. Overall, the revenue from the tax increases he approved through 1988 amounted to half of the tax cuts, which were almost exclusively the result of the 1981 tax law.[30]

Since large federal budget deficits continued throughout the 1980s, calls for spending cuts and tax increases continued. When Reagan's vice president,

George H. W. Bush, ran for the presidency, he made his priorities clear as to how he would deal with the deficit. "Read my lips," he thundered during the 1988 Republican convention, "no new taxes." When it became clear that cutting the deficit could not be accomplished by spending cuts alone, Bush agreed to raise taxes in 1990.

President Bush had to rely on the votes of Democrats to get an overall majority in Congress, because the majority of House Republicans voted against his tax plan. Congress raised the top income tax rate from 28 to 31 percent, while leaving the top rate for capital gains untouched. As a result, once again, income from investments was taxed at a lower rate than income from wages and salaries. Congress also raised the excise taxes on luxury items, such as furs, jewelry, boats, planes, and expensive cars. Bush's turnaround on his "no new taxes" pledge severed his relationship with the conservative wing of his party. Old-style Republicans (such as Bush), who were fiscal conservatives and thus worried about deficits, were increasingly marginalized as new leaders (such as Newt Gingrich), who were dedicated to cutting taxes and cutting government, seized control of the Republican Party. The realignment within the Republican Party created a new orthodoxy among its elected officials. Tax cuts had to be supported under all circumstances, whether there were budget surpluses or budget deficits, new wars, or new entitlement programs. Activist groups demanding radical reductions in taxes, such as Americans for Tax Reform and the Club for Growth, grew in prominence and functioned to keep wayward Republicans in line. Republican candidates had to pledge to oppose all tax increases or risk challenges in the primary elections. Soon, over 90 percent of congressional Republicans pledged not to raise taxes, period.

Deficit politics continued to dominate budgetary decisions during the Clinton administration. In the small window from 1993 to 1994, when the Democrats had a majority in Congress, President Bill Clinton was able to raise the top income tax rate to 39.6 percent, with five marginal income tax rates: 15, 28, 31, 36, and 39.6 percent. Republicans in Congress warned that raising the top rates would strangle investment and smother economic growth, and they voted in a block against his proposals. Clinton argued that by lowering the deficit, interest rates would drop, due to a decrease in the demand for borrowed money, and lower interest rates would stimulate the economy. The 1990s, it turned out, saw tremendous economic growth, not the economic decline predicted by Republicans. Whether or not deficit reduction was the key to economic growth, one thing was clear: tax increases did not stifle innovation, employment, or economic growth.

The 1994 midterm election resulted in Republican control of both houses of Congress for the first time in forty years and, with it, added pressure for tax cuts. The luxury taxes implemented in 1990 were rescinded. Capital gains taxes

were again singled out for preferential treatment, and in 1997, the top tax rate on long-term gains was cut from 28 to 20 percent. This exacerbated the already-existing gap between higher tax rates on wages and lower rates on financial investments. By the end of the Clinton administration, the federal deficit had evaporated, due to earlier tax increases, strong economic growth, and restraints on spending. For the first time in decades, there was a budget surplus. Between 1950 and 1997, there had been only three other surplus years, while Clinton claimed credit for four surplus years during his time in office.

The Clinton budget surplus presented Republican presidential candidate George W. Bush (George H. W. Bush's son) with the opportunity to call for massive tax cuts, and throughout the latter's presidency, tax cuts remained central to his agenda. As a candidate, Bush offered tax cuts with an estimated ten-year cost of between $1.3 and $1.9 trillion, depending on how interest on the federal debt was calculated. The scale of these cuts exceeded the entire budget surplus that Bush inherited from the Clinton years, not counting the Social Security and Medicare trust funds. At first, Bush justified the tax cuts as returning money to those who pay the bills, claiming it was their money, after all, not the government's. When the 2001 recession hit, he embraced a supply-side justification for cutting taxes, arguing that this was necessary to stimulate the ailing economy. Then, when faced with the budget surplus turning into deficit in August 2001, Bush embraced a starve-the-beast strategy when he said that this deficit was "incredibly positive news," because it would halt the growth of the federal government by putting Congress in a "fiscal straightjacket," preventing additional spending. Pushing tax cuts was also part of an electoral strategy to prevent a repeat of his father's falling out with conservatives. In terms of dollars, the 2001 tax cut was the largest in US history, although, as a percentage of the economy, it was a bit smaller than the 1981 Reagan cuts. Taken together, the Bush cuts transformed the tax code: decreasing tax rates, increasing deductions and exemptions, slashing taxes on investment income, and first reducing and then abolishing the inheritance tax. Phased in over time, the top tax rate was lowered from 39.5 to 35 percent. Dollar benefits were heavily tilted toward the wealthiest Americans, although the bottom income tax rate was also lowered, from 15 to 10 percent. Average taxpayers received little. Between 2001 and 2008, for example, the top 1 percent of income earners reaped 38 percent of the tax breaks, while the top 10 percent garnered 55 percent. The bottom 20 percent, meanwhile, only got a 1 percent share of the tax cuts, and bottom 60 percent (the majority of Americans) received less than 20 percent of the total dollar benefit.[31]

The fiscal consequences were sudden and predictable—federal revenue plummeted. The Bush tax cuts, combined with the effect of the 2001 recession, the costs of the wars in Afghanistan and Iraq, and the new Medicare

prescription drug benefit, quickly turned budget surpluses to budget deficits of historic proportions. It was unprecedented to wage war, or start a new major entitlement program, such as the Medicare drug benefit, without calling for taxes to pay for them. Never before were taxes cut during wartime. Across the political spectrum, scholars labeled this fiscal behavior reckless and irresponsible. Nevertheless, after the 2002 midterm election, a big win for Republicans, the Bush administration continued on its relentless path of tax cuts. Proposals were developed to accelerate the 2001 tax cuts and slash the tax on dividends by 50 percent, another bonanza for the wealthy. Paul O'Neill, the Bush administration's first treasury secretary and a traditional conservative, did not support further tax cuts and warned Vice President Dick Cheney that the nation was moving toward a "fiscal crisis." Cheney responded, "Reagan proved deficits don't matter," adding that "this is our due."[32] A few weeks after raising this issue, O'Neill was fired.

The administration's tax-cutting fever was never shared by the public. At the beginning of George W. Bush's presidency, fewer than 5 percent of the population said that taxes were the most important issue facing the nation. Few people were opposed to tax cuts in principle, but once real-world tradeoffs—which required cutting programs as the price of tax cuts—were mentioned, opinions changed. Large majorities preferred spending the budget surplus inherited from the Clinton administration on deficit reduction and on programs such as Social Security, Medicare, and education.[33] The Bush administration was well aware of these public preferences. A 2001 internal memo indicated that the administration's tax-cutting plans ran counter to public opinion: "The public prefers spending on things like health care and education over cutting taxes."[34]

In order to push through its aggressive tax-cutting agenda, the Bush administration had to overcome filibuster hurdles in the Senate, which require sixty votes for passage of a piece of legislation. Fearing that they lacked these necessary sixty votes, Republicans used the Senate reconciliation rule, which prevents budget and revenue bills from being filibustered. But to do that, the Senate rules require that a bill not alter revenue for more than ten years. Thus the Bush tax cuts had to be structured to expire at the end of 2010, with tax rates then returning to the 2001 levels. Another advantage of this maneuver was that the costs of the tax cuts would appear smaller, since they would only be calculated over their ten-year lifespan, even though Republicans always intended these cuts to be permanent. For example, the estate tax was scheduled to be phased out completely by 2010, and then revert to the 2000 level in 2011. Cuts to the top marginal tax rates, from 39.5 to 35 percent, were phased in over time. Dividend and capital gains taxes were also structured to be reduced to 15 percent for a few years, and then revert to 20 percent for the highest rate

on capital gains, and to 38.6 percent for dividends. An additional advantage of structuring the cuts to last only ten years was that this would present policy makers with built-in pressures to extend the cuts or be attacked for raising taxes when the tax-cut period expired to produce this result. This is exactly what happened in 2010.[35] As a result of the Bush cuts, top income earners saw their share of federal taxes go down, while middle income earners saw their share go up.

Perhaps the most radical aspect of the Bush tax cuts was the phasing out of the estate tax by 2010, with the twist that it would then revert to its 2000 level. The federal estate tax had been in existence since 1913, as one of the Progressive Era's tax reforms, although it was used sporadically during the nineteenth century. Progressive Era reformers saw the estate tax as addressing the imbalance of wealth, while, at the same time, being a source of needed revenue to finance US involvement in World War I. Based on polling data by political consultant Frank Lutz, Bush-era Republicans realized that labeling the estate tax as a "death tax" could turn public opinion against the tax, with people asking, "You have to pay a tax when you die?" This rhetorical switch took a once-obscure provision of the tax code that touched fewer than 2 percent of all estates (those of the truly wealthy) and made it into a national issue. During the debate over the abolition of the estate tax, some of the nation's wealthiest individuals—including Warren Buffet, William Gates Sr., Bill Gates, and David Rockefeller, who were themselves subject to the tax—tried to block its repeal. Buffet, for example, argued that an estate tax was a necessary "curb on the movement of a democracy toward a plutocracy."[36] Fearing an aristocracy of wealth, Buffet declared that success should be based on merit, not inheritance. Others were afraid that cutting the estate tax would devastate charitable giving or otherwise negatively affect programs benefiting those at the bottom of the income ladder. Those who supported the repeal thought the tax was nothing more than a penalty for success. Confusion concerning how the estate tax operated was common. Many thought it prevented farmers from passing down farms to the next generation. Yet the American Farm Bureau Foundation, which supported the repeal, could not cite a single case where this had occurred. The tax laws already had special provisions to prevent this. In the end, many Americans falsely believed that they were subject to the tax, and the Bush proposal passed.

Altogether, Bush's tax-cutting and spending policies had devastating consequences for the overall federal budget. In 2007, the Congressional Budget Office estimated that these Bush policies were responsible for a $7.7 trillion turnaround from the surplus projected for 2002–2011, pushing the budget into deficit. In large part due to the Bush tax cuts, in 2010 federal tax revenue had

dropped to 14.9 percent of GDP, the lowest level since 1950. Moreover, in 1950 there was no Medicare tax (currently 2.9%), and the Social Security tax was 2 percent instead of 12.4 percent.

BARACK OBAMA

As a presidential candidate, Barack Obama had pledged to allow the Bush tax cuts to expire for individuals who earned above $200,000 and couples who earned $250,000 or more, in other words, the top 2 percent, while locking in the Bush tax cuts for everyone else. The financial crisis that accelerated during the fall of 2008 dimmed the prospects of any tax increase. Republican victories in the 2010 midterm elections, aided by the newly insurgent Tea Party, gave them control of the House of Representatives, putting new pressures on the Democrats to fashion a tax bill before January, when the Republican majority would be in place. With the nation still reeling from the Wall Street financial crisis, Obama did not want taxes to rise, for fear it would further depress the economy. As the December deadline approached, when the Bush tax cuts were set to expire, President Obama reached a compromise with both Democrats and Republicans that extended the Bush cuts for two years for all income earners, cut the Social Security tax by 2 percent for one year in order to stimulate spending, and reestablished the estate tax, with a $5 million exemption, at a rate of 35 percent. Obama backed away from his campaign pledge to raise taxes on top income earners, in part because Republicans threatened to block an extension of unemployment insurance. The two-year cost of the tax cut extensions, in terms of lost revenue, came to just over $800 billion. Since the federal government was already running a deficit, this total amount was financed by borrowing. Nevertheless, Republicans hailed the extension of the Bush tax cuts, despite its increasing the deficit that they had argued was destroying the nation.

As the two-year extension of the cuts was set to expire in December 2012, just a month after President Obama was reelected, the Democrats now had the upper hand, even though the Republicans held a majority in the House and in the incoming Senate. Obama threatened to veto any legislation that extended the Bush tax cuts for the wealthy, placing Republicans in a bind. If they held fast to their desire to see all of the Bush tax cuts extended, this action would risk a presidential veto and taxes would go up for all Americans. If they bowed to Obama's plan, they would have to allow taxes on the rich to rise. With public support clearly on Obama's side, the Republican-dominated House conceded, although they were able to raise the income threshold for those who would pay the higher tax rate. The top rate of 39.6 percent was restored (from 35%) for individuals who made more than $400,000 (for married couples, more than

$450,000). Tax rates on capital gains and dividends were raised to 23.8 percent for those in this top bracket. The top capital gains rate had been 15 percent (down from 20% in 2000), while the top rate for dividends had been 15 percent (down from 39.6% in 2000). The estate tax rate was raised to 40 percent on estates over $5.45 million for individuals and $10.9 million for married couples. In a bow to the political reality structured by the Bush tax cuts, however, the deal locked in 85 percent of these cuts, at an estimated cost of $3.3 trillion in lost revenue over ten years.[37] Yet, by raising taxes on the top income earners, Obama was able to address the problem of rising inequality and the slide in the average tax rate paid by the richest Americans over the past generation. When the Internal Revenue Service (IRS) released tax data for 2013, the first year under the new rates, it showed that the average tax rate for the top 400 richest Americans increased from 23 to 27 percent; for the top 0.01 percent, the average rate rose even more, from 19 to 26 percent.

The Tax System Today

The federal government gets its tax revenue from five basic sources, listed in order of magnitude: personal income taxes, payroll taxes, corporate profits taxes, excise taxes, and miscellaneous other taxes. The first three categories account for approximately 92 percent of revenues. In 2015, personal income taxes accounted for 47 percent of federal revenue; social insurance payroll taxes, 33 percent; corporate income taxes, 11 percent; and a combination of excise, estate, and other taxes, the remaining 9 percent. Individuals pay income tax only on what is known as adjusted gross income, or taxable income. Overall, less than half of all personal income is taxable. The largest factor that explains the difference between one's total income and one's taxable income is deductions: either the standard deductions most people take or, for about one-third of taxpayers, itemized deductions, which are even larger. Overwhelmingly, those who itemize are in the top 20 percent of income earners.

Average Americans pay taxes under two different sets of rules. Personal income tax is based on one's adjusted gross income and has marginal, progressive rates. Currently, there are seven tax rates (10, 15, 25, 28, 33, 35, and 39.5%), and each applies to an increment of income as one ascends the income ladder. As a result, the average rate that people pay is generally lower than the top rate that applies to their income level. Because of the unequal distribution of income and the progressivity of the income tax, top income earners account for most of the revenue from income taxes. In 2014, those who had an adjusted gross income of $250,000 and above, the top 2.7 percent, paid 51.6 percent of federal income tax revenue. The bottom 45 percent—the poor, relatively low-income working families, and senior citizens—pay no federal income tax. Yet

two-thirds of them pay myriad other taxes, including Social Security and Medicare payroll taxes, as well as state and local taxes. During the 2012 presidential election, Mitt Romney brought attention to those who did not pay income taxes, in what turned into a public relations disaster. At a meeting of millionaire donors, he was secretly taped lamenting that those who do not pay taxes were "dependent upon government, who believe that they are victims, who believe that they are entitled to health care, to food, to housing, to you name it" and would never vote for him, "no matter what."

While marginal rates apply to adjusted gross income for personal income taxes, a flat tax for Social Security and Medicare is assessed on wages. In 2016, a flat rate of 12.4 percent in Social Security taxes—split between the employee and the employer—is applied to the first $118,500 of wages or salaries. Any income above this amount does not have Social Security taxes deducted from it. As a result, those with millions in income pay the same dollar amount in Social Security taxes as those who earn $118,500. Income from investments is not taxed at all. Meanwhile, a 2.9 percent tax for Medicare is levied on all income. Because of deductions that lower one's income taxes, by the mid-1990s two-thirds of Americans paid more in Social Security taxes than in income taxes.

For the relatively few with investment income, there is another set of tax rates. Capital gains taxes are lower than the tax rates for wages and salaries. For investments held for over one year, the capital gains taxes on profits from investments for all except the top 1 percent of individuals is 15 percent. For those in the top 1 percent, the rate is 20 percent. Short-term gains are taxed at the regular income tax rates. As a result, those at the very top of the income scale, who typically receive the bulk of their income from investments, pay a lower tax rate than average workers. Warren Buffet, for example, the nation's second-richest person, pointed out that he paid 17.4 percent of his income in taxes, compared with an average of 36 percent for his office staff.[38]

While federal personal income taxes are progressive, payroll taxes, sales taxes, and many state income taxes are not. Thus, when all taxes are added together, including all federal, state, and local taxes, the share of total taxes paid in 2016 by each income group closely mirrors the share of income that each group earns. For example, the share of all taxes paid by those in the top 1 percent (with an average income of $1,723,000) was 23.6 percent, while their share of the total income for all Americans was 21.6 percent. The share of total taxes from the middle quintile (with an average income of $48,800) was 9.9 percent, while their share of total income was 11.1 percent. The poorest 20 percent (with an average income of $15,100) paid 2.1 percent of total taxes on 3.3 percent of total income. Thus the US tax system is a mixture of progressive income taxes, regressive as well as flat payroll taxes, and lower tax rates on income from investments than on income from work. In addition,

Incomes and federal, state, and local taxes in 2016

	Shares of			*Taxes[a] as a % of income*		
	Average cash income[b] ($)	*Total income (%)*	*Total taxes (%)*	*Federal taxes (%)*	*State & local taxes (%)*	*Total taxes (%)*
Lowest 20%	15,100	3.3	2.1	7.1	12.2	19.3
Second 20%	30,600	6.8	5.2	11.8	11.4	23.2
Middle 20%	48,800	11.1	9.9	16.3	11.0	27.3
Fourth 20%	81,000	18.6	18.5	19.7	10.9	30.6
Next 10%	124,000	14.2	14.8	21.2	10.7	31.9
Next 5%	176.000	10.1	10.7	22.0	10.5	32.5
Next 4%	308,000	14.2	15.1	22.7	10.1	32.8
Top 1%	1,723,000	21.6	23.6	25.0	8.7	33.8
All	85,900	100.0	100.0	20.4	10.3	30.8
Addendum: Bottom 99%	69,300	78.4	76.2	19.1	10.8	29.9

SOURCE: Institute on Taxation and Economic Policy tax model, April 2016, Citizens for Tax Justice, http://ctj.org.

[a]Taxes include all federal, state, and local taxes (personal and corporate income, payroll, property, sales, excise, estate, etc.).

[b]For calculations of income shares and taxes as a percentage of income, income includes employer-paid FICA taxes and corporate profits net of taxable dividends, neither of which is included in the average cash income figures shown.

there are state and local taxes that combine each of these elements, along with sales and property taxes. When all taxes are added together, the US tax system is less progressive than it first appears (see the table above).

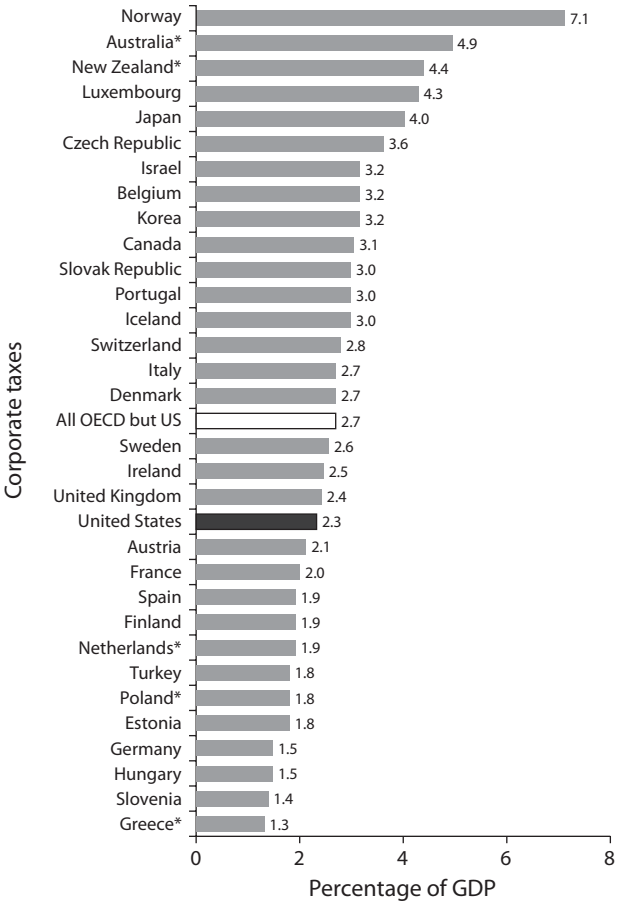
The third-largest component of the federal tax system is the tax on corporate profits. Economists debate whether corporations actually pay taxes or simply pass their tax bill along to consumers, in the form of higher prices. Leaving aside this unresolved issue, over the past fifty years, the share of federal revenue derived from corporate taxes has dropped significantly. In 1950, for example, corporate taxes accounted for 26.5 percent of federal revenue, but by 2015, this figure stood at 11 percent. Part of the shift away from corporate taxes simply reflects an increase in payroll taxes, due to an increase in the Social Security tax and, beginning in 1965, the Medicare tax. This alone, however, does not account for all of the decline in corporate tax revenue. Corporate tax avoidance has become common. Corporate America has been able to have Congress carve out exemptions, deductions, and other provisions in the law to significantly lower its taxes. Moreover, by using creative accounting transfers, big firms have been able to avoid paying US taxes by shifting their profits among

subsidiaries in low-tax nations. These actions led *Business Week* to report that "tax avoidance became a competitive sport."[39] Through a complex set of interpretations of the law provided by willing legal and accounting firms, corporate profits reported to the IRS were significantly lower than those reported to shareholders. Meanwhile, Republicans in Congress have cut the IRS's auditing capacity.

For example, a study done in 2000, on the actual levels of corporate taxation came to conclusions similar to those done during the Reagan administration: many of the nation's largest corporations were finding ways around the statutory 35 percent corporate tax rate. The average rate of taxation of 250 of the nation's largest and most profitable companies was 20.1 percent in 1998, and 41 companies managed to pay less than zero (receiving a rebate on taxes they had paid previously) in at least one year between 1996 and 1998. The pretax profits of these companies totaled $25.8 billion, yet rather than pay $9 billion in taxes due at the normal rate, they received $3.2 billion in rebate checks. Altogether, these top firms made $735 billion in profits between 1996 and 1998 but were able to reap tax savings of $98 billion. GE led the pack, with $6.9 billion in tax breaks.[40]

Some even describe GE's tax department as the world's best tax law firm. In March 2011, the *New York Times* ran a front page story that outlined GE's success in not paying any corporate taxes. In 2010, for example, while the company earned $14.2 billion in profits, of which $5.1 billion were attributed to US profits, GE did not pay any corporate profits tax.[41] Boeing, another corporate giant adept at avoiding taxes, earned $9.7 billion in profits between 2008 and 2010 and also did not pay any corporate taxes; instead, it received a $75 million rebate.[42] A 2014 report by Citizens for Tax Justice showed that among the 288 Fortune 500 companies that were profitable each year from 2008 to 2012, the average corporate tax rate paid was 19.4 percent. Twenty-six firms paid no federal corporate profits tax at all over the five years, 111 firms enjoyed at least one year in which their federal tax was zero or less, and one-third paid at a rate less than 10 percent. The total federal tax subsidy (money the federal government "gives" to a company by not collecting the full corporate profits tax that is due) for the 288 firms over these five years came to $362 billion.[43]

A broad measure comparing US corporate taxes with those of other nations belies the claim that American corporations are burdened with high taxes. Despite the appearance of a high tax rate, US corporate taxes are well below the average for the OECD nations. US corporate taxes as a percentage of GDP are 2.3 percent, which is less than the 2.7 percent average among these 32 nations (see the graph below).



Corporate taxes as a share of GDP (in percentages) in 2014.

OECD data, http://stats.oecd.org; US data from the US Treasury and US Census, 2016, Citizens for Tax Justice, http://ctj.org.

*Data from 2013 is used for Australia, Greece, the Netherlands, New Zealand, and Poland, due to lack of more recent data.

TAX EXPENDITURES

Tax policy involves much more than simply setting tax rates and collecting revenue. Deductions and credits lower the taxable income on which tax rates are applied, thereby reducing the amount of taxes owed. Commonly known as tax breaks, and officially known as tax expenditures (money the federal government "pays" an individual or a business firm by not collecting it as a tax), these provisions decrease the federal revenue generated by the tax system. Taxpayers

pay less in taxes if they spend money on certain activities (such as education or health care); in effect, the government subsidizes these activities. Whether government programs directly send money to individuals or allow them to pay less in taxes, it amounts to the same net cost for the government. In comparing tax expenditures with direct government spending, Eugene Steuerle, a prominent tax economist, wrote: "One looks like smaller government; one looks like bigger government. In fact, they both do exactly the same thing."[44] While tax specialists view tax expenditures and direct spending in the same light, most Americans see them quite differently. To the public, tax breaks do not appear to be public benefits at all. Public opinion surveys show that recipients of tax credits and deductions do not believe that these are benefits from the government. On the other hand, those who receive direct government benefits are aware that these have come from government programs.[45] A telling example of the largely invisible nature of tax breaks was apparent in polls concerning the Obama stimulus program. In response to the financial crash of 2008, Congress passed a $787 billion stimulus bill, of which $288 billion (37%) was made up of tax cuts for 95 percent of Americans. Yet a poll taken a year later showed that only 12 percent knew that their taxes were lower, 53 percent believed that there had been no change, and 24 percent thought their taxes had gone up.

Conservatives have favored the use of tax breaks, because they allow the delivery of government benefits without appearing to enlarge government expenditures. Tax breaks mostly benefit upper-income earners, who account for the bulk of those who can take advantage of these breaks by itemizing deductions on their personal income tax returns. And, it appears, such breaks do not lead to a better opinion of government. Those taxpayers who take advantage of tax breaks do not have a more positive view of tax fairness, while those who directly benefit from government spending do. Suzanne Mettler argues that the result of using such "invisible" benefits leads citizens to falsely "assume that markets are more autonomous and effective than they are in actuality, and they may well fail to give government due credit for addressing society's problems."[46] She concludes that tax expenditures, part of what she labels "the submerged state," have "degenerative effects on the relationship between citizens and government."[47]

In 2015, total federal tax expenditures were estimated at more than $1.3 trillion, while federal income tax revenue was $1.5 trillion, and corporate taxes generated $341 billion. Revenue lost through tax breaks exceeded the amount of federal funds disbursed for Social Security; Medicare, Medicaid, and other health care; the Defense Department; and all other discretionary spending. Just over 50 percent of the top ten tax expenditures went to the top 20 percent of taxpayers. Perhaps the most familiar tax expenditures are the deduction for interest on a home mortgage and the tax-free employer contribution for employee

health insurance. In 2015, these provisions cost the federal government $74 billion and $207 billion, respectively, in foregone revenue. The home mortgage–interest deduction is particularly skewed to upper-income earners. The larger one's mortgage, the more interest one pays, and, therefore, the bigger the tax break. In 2007, for example, approximately 85 percent of this tax break went to those who earned $75,000 or more, with 30 percent going to those who earned $200,000 or more.[48] This tax benefit exceeds the entire budget for the Department of Housing and Urban Development (HUD), whose programs targeting housing for the poor make up only a portion of HUD's budget.

GOVERNMENT SPENDING

One of the popular criticisms of the government is that federal spending continues to spiral out of control. As a percentage of the economy, however, overall federal spending today is barely above what it was at the end of the Reagan administration: 20.6 percent (1988) versus 21 percent (2015). In the twenty-five years in between, spending has varied between 17.6 percent (2000–2001) at the end of the Clinton presidency to 24.4 percent (2009) at the end of the George W. Bush presidency.

The federal government spent $3.7 trillion in 2015. Just four activities account for 71 percent of this: health care, Social Security, defense and international security, and interest on the federal debt. Thus the federal government might be thought of as an insurance company with an army. Broadly speaking, federal spending can be divided into two categories. Mandatory spending, sometimes labeled entitlements, are those programs where disbursements are obligated by an ongoing authorizing law, and which pay benefits to those who meet certain eligibility requirements. Medicare and Social Security are the two major examples of entitlements, each of which is financed by a separate payroll tax. Thus controlling the costs of these programs is not something that can be easily accomplished through the annual budget process. The only way to control these expenditures is to change the eligibility criteria for participants in the programs. Discretionary spending covers almost all other government programs, including the military, foreign aid, government operations, education funding, environmental protection, transportation, and more. If all spending is lumped together, mandatory spending accounts for about two-thirds of the federal budget.

Of the $3.7 trillion in federal spending, Medicare, Medicaid, and the Children's Health Insurance Program (CHIP) accounted for 25 percent of this amount ($938 billion); Social Security, for another 24 percent ($888 billion); and military and international security, for 16 percent ($602 billion). This figure does not include veterans benefits or nuclear weapons research funded through the

Energy Department. Safety net programs—including food stamps, school lunches, low-income housing programs, child care assistance, and cash payments to the disabled and unemployed—accounted for 10 percent of federal spending ($362 billion). Interest on the debt accounted for 6 percent ($229 billion). The remaining 19 percent covers everything else done by the federal government, including federal retirement and veterans benefits, education, scientific and medical research, transportation, justice, environment protection, and government operations.

Conclusion

Today, battles over taxes are proxy battles over government's fiscal capacity, and are battles that seek to address growing economic inequality. Tax policies that favor the wealthy and big business are apt to remain in place as long as lobbying and campaign contributions are dominated by moneyed interests. As part of this political offensive, antitax forces have been able to transform the debate over taxes, asserting that individuals are merely taxpayers, thereby deemphasizing their role as citizens. As a result, the bonds between citizenship, community, and governmental responsibilities have been frayed.

Notes

1. Compañía de Tobacos v. Collector, 275 U.S. 87 (1927), at 100. This inscription is on the front of the Internal Revenue Service's headquarters building in Washington, DC.

2. Sheldon Pollack, *War, Revenue, and State Building* (Ithaca, NY: Cornell University Press, 2009), 10.

3. Sven Steinmo, *Taxation and Democracy* (New Haven, CT: Yale University Press, 1993), 3.

4. This historical framework follows the work of W. Elliot Brownlee, *Federal Taxation in America*, 2nd ed. (New York: Cambridge University Press, 2004).

5. Ajay Mehrotra, *Making the Modern American Fiscal State* (New York: Cambridge University Press, 2013), 87.

6. Springer v. United States, 102 U.S. 586 (1881).

7. Pollock v. Farmers' Loan & Trust Co., 157 U.S. 429 (1895), at 607.

8. Quoted in Sidney Ratner, *American Taxation: Its History as a Social Force in Democracy* (New York: W. W. Norton, 1942), 212–13.

9. Quote from Edwin R. A. Seligman, *Essays in Taxation* (New York: Macmillan, 1895), 72, in Mehrotra, *Modern American Fiscal State*, 113.

10. Mehrotra, *Modern American Fiscal State*, 13.

11. Adam Smith, cited in Brownlee, *Federal Taxation in America*, 13.

12. Sheldon Pollack, *The Failure of U.S. Tax Policy: Revenue and Politics* (University Park: Pennsylvania State University Press, 1996), 55.

13. W. Elliot Brownlee, "Tax Regimes, National Crisis, and State-Building in America," in Brownlee (ed.), *Funding the Modern American State: 1941–1995* (New York: Cambridge University Press, 1996), 62.

14. Pollack, *Failure*, 57.

15. Brownlee, *Federal Taxation in America*, 77.

16. Mark Leff, *The Limits of Symbolic Reform: The New Deal and Taxation, 1933–1939* (New York: Cambridge University Press, 1984).

17. Franklin Delano Roosevelt, cited in Larry DeWitt, "Luther Gulick Memorandum re: Famous FDR Quote," *Research Notes & Special Studies by the Historian's Office*, Research Note 23, July 21, 2005, Social Security Administration, https://www.ssa.gov/history/Gulick.html.

18. See Carolyn Jones, "Mass-Based Income Taxation: Creating a Taxpaying Culture, 1940–1952," in Brownlee, *Funding*, 107–47; Carolyn Jones, "Class Tax to Mass Tax: The Role of Propaganda in the Expansion of the Income Tax during World War II," *Buffalo Law Review* 37 (1989): 685–737.

19. Monica Prasad, *The Land of Too Much* (Cambridge, MA: Harvard University Press, 2012), 99.

20. John Witte, *The Politics and Development of the Federal Income Tax* (Madison: University of Wisconsin Press, 1985), 220–21.

21. David Stockman, quoted in William Greider, "The Education of David Stockman," *Atlantic Monthly*, December 1981, 5.

22. Bruce Bartlett, "'Starve the Beast': Origins and Development of a Budgetary Metaphor," *Independent Review* 12, no. 1 (Summer 2007): 6.

23. Witte, *Politics and Development*, 234.

24. For the details of the 1981 act, known as the Economic Recovery Tax Act of 1981, see Howard Shuman, *Politics and the Budget*, 3rd ed. (Englewood Cliffs, NJ: Prentice Hall, 1992), 129–31. See also Witte, *Politics and Development*, 220–43, esp. 232–33.

25. Philip Stern, *Still the Best Congress Money Can Buy*, rev. ed. (Washington, DC: Regency Gateway, 1992), 13.

26. Robert McIntyre, *Corporate Taxpayers and Corporate Freeloaders* (Washington, DC: Citizens for Tax Justice, 1985), www.ctj.org/pdf/taxpayersandfreeloaders.pdf.

27. Joel Slemrod and Jon Bakija, *Taxing Ourselves*, 4th ed. (Cambridge, MA: MIT Press, 2008), 112–57.

28. Shuman, *Politics and the Budget*, 138.

29. For example, see Dan Clawson, Alan Neustadtl, and Mark Weller, *Dollars and Votes: How Business Campaign Contributions Subvert Democracy* (Philadelphia: Temple University Press, 1998), 68–69.

30. Bartlett, "'Starve the Beast,'" 13.

31. Andrew Fieldhouse and Ethan Pollack, "Tenth Anniversary of the Bush-Era Tax Cuts," Economic Policy Institute Policy Memorandum 185, June 1, 2011.

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33. Jacob S. Hacker and Paul Pierson, "Tax Politics and the Struggle over Activist Government," in Pierson and Theda Skocpol (eds.), *The Transformation of American Politics* (Princeton, NJ: Princeton University Press, 2007), 265.

34. Cited in Hacker and Pierson, "Tax Politics," 266.

35. For an analysis of how and why the Bush tax cuts were structured, see Jacob Hacker and Paul Pierson, "Abandoning the Middle: The Bush Tax Cuts and the Limits of Democratic Control," *Perspectives on Politics* 3, no. 1 (March 2005): 33–53.

36. David Cay Johnston, "Dozens of Rich Americans Join in Fight to Retain the Estate Tax," *New York Times*, February 14, 2001.

37. "Revenue Impacts of the Fiscal Cliff Deal," January 3, 2013, Citizens for Tax Justice, http://ctj.org/pdf/fiscalcliffdealrevenueimpacts.pdf.

38. Warren Buffett, "Stop Coddling the Super-Rich," *New York Times*, August 14, 2011.

39. Nanette Byrnes and Louis Lavelle, "The Corporate Tax Game," *Business Week*, March 31, 2003, 80.

40. Robert McIntyre, "Study Finds Resurgence in Corporate Tax Avoidance," October 19, 2000, Institute on Taxation and Economic Policy, www.itepnet.org/pdf/corpoopr.pdf.

41. David Kocieniewski, "GE Turns the Tax Man Away Empty-Handed," *New York Times*, March 25, 2011, A1.

42. "Boeing's Reward for Paying No Federal Taxes over Last Three Years? A $35 Billion Federal Contract," February 25, 2011, Citizens for Tax Justice, www.ctj.org/pdf/boeing0211.pdf.

43. Robert McIntyre, Matthew Gardner, and Richard Phillips, *The Sorry State of Corporate Taxes*, February 2014, Citizens for Tax Justice, www.ctj.org/corporatetaxdodgers/sorrystateofcorptaxes.pdf.

44. Eugene Steuerle, cited in Suzanne Mettler, *The Submerged State* (Chicago: University of Chicago Press, 2011), 27.

45. Ibid., 43.

46. Ibid., 27.

47. Ibid., 46.

48. Christopher Howard, "Making Taxes the Life of the Party," in Isaac William Martin, Ajay K. Mehrotra, and Monica Prasad (eds.), *The New Fiscal Sociology* (New York: Cambridge University Press, 2009), 91.

CHAPTER FOUR

The Welfare State

It is generally agreed that welfare programs serve a variety of important purposes. They reduce, prevent, or relieve poverty. They promote social equality by redistributing resources from richer to poorer members of society. They protect against the risks arising from unstable labor markets (unemployment and economic displacement) and from threats to the family (death or disability). They encourage personal independence and social integration and cohesion, thereby enhancing social stability. Lastly, they boost aggregate demand, helping to stabilize the economy. A welfare state's significance, and a reason for its continuing controversy, is due precisely to the alternative source of income and benefits it provides outside of the labor market. Thus the standard of living that many people enjoy depends on a combination of private-sector compensation (wages and salaries, for the most part) and benefits received from public-sector programs. Well over half of all households in the United States receive some direct government benefit from at least one welfare state program.*

Welfare state programs serve a majority of Americans, and they are the result of mobilizations by broad sections of the American public. Nonetheless, the welfare state has, at times, been the most controversial part of the American state. The continuing attempts to roll back substantial parts of the welfare state testify to the controversies that accompany its operations and its very existence. These controversies often arise because of conservative complaints that the welfare state rewards indolence and laziness, while it penalizes hard work and personal responsibility. This chapter confronts these criticisms by exploring the development of the welfare state since the 1930s.

We must first understand that all industrial nations have government programs designed to meet the economic needs of their citizenry. Various

* Mark Robert Rank reports that "65% [of Americans] have received support from a cash and/or in-kind program." And this percentage does not include a significant number of recipients, such as individual homeowners who receive government subsidies in the form of a mortgage interest deduction and a deduction of their local property taxes on their personal income taxes (*One Nation, Underprivileged: Why Poverty Affects Us All* [New York: Oxford University Press, 2004]).

programs deal with illness, disability, unemployment, old age, and dependency (the needs of single mothers and children, for example). In addition, a host of programs address educational, health, food, and housing needs. Together, these many different programs constitute the welfare state, and many scholars view these programs as inevitable aspects of modern industrial societies. Most criticisms focus on one part of this system, "welfare" itself—the aid granted to able-bodied adults (primarily women) and their children. With the vast majority of welfare spending going to support dependent children, it seems odd and even disturbing that this program elicits such continuing demonization from critics, whose constant drumbeat of complaints has successfully stigmatized recipients and produced a seeming distrust and even superficial antagonism to the entire welfare state itself. Still, most of the welfare state remains very popular, and Americans continue to express a deep commitment to "almost every aspect of the welfare state."[1]

Why Welfare States Emerged

Contemporary welfare programs in the Western industrial democracies trace their direct origins back hundreds of years. With the Industrial Revolution and the end of traditional, agrarian society, national governments increasingly took on the responsibilities for providing for the economic security of its citizens and establishing a basic minimum level of well-being for all. Every nation found that markets alone proved to be simply too unstable to be relied on to provide the basic necessities of life for all citizens. As discussed in the introduction, Karl Polanyi argues that, as a result, the welfare state became an inevitable and ever-present part of the government in modern societies. Polanyi asserts that the original nineteenth-century "great transformation" was a government-driven process to forcibly impose a new market regime on citizens, based on free markets in land and labor. This new market regime, however, reduced both the population of laborers and the natural environment to the status of mere commodities, things to be bought and sold in the marketplace.

The commodification of labor resulted in a new kind of exploitation of workers. Work became wage labor, with little or no cushion against unemployment. Work was often irregular, seasonal, dangerous, ill paid, and threatened by economic downtowns and wretched conditions. Nothing guaranteed that breadwinners would ever find secure work, and nothing protected families against the loss of a breadwinner. All of these insecurities of wage labor ensured that poverty and dire need became a constant threat, if not a regular occurrence, for much of the population. Polanyi understands that such a regime would prove so destructive of the environment and of the human labor-

ing population that "to allow the market mechanism to be the sole director of the fate of human beings and their natural environment . . . would result in the demolition of society."[2]

In reaction to these threats, Polanyi finds that every society rebelled in various ways against the ravages of the free market regime. This reaction institutionalized various measures of social protection designed to limit the reach and impact of free markets. Regulatory and welfare state measures made the new free markets more humane and sustainable, and the mixed economy of free markets plus government protections became the norm in every nation that pursued free markets.[3]

Still, welfare state programs did not emerge simply because there was a need for them. As Frances Fox Piven and Richard Cloward argue, relief giving, and the welfare states that sustain such relief, emerged as a way of dealing with the threats and reality of disorders caused by the economic dislocations that are part and parcel of a free market system. As they understand, "relief arrangements are initiated or expanded during the occasional outbreaks of civil disorder produced by mass unemployment, and are then abolished or contracted when political stability is restored." Welfare state relief giving expands in the face of social disorder caused by severe economic dislocations, disorder in the streets, and disorder in the electoral system as well. Relief and other government aid for the unemployed and the indigent are thus concessions wrested from government officials by those facing serious economic hardship.[4]

But welfare state supports proved to be very controversial, because they allow some people to opt out of labor markets. By competing with a private wage-labor system dominated by employers, welfare state supports disrupted and undermined private power relations. As a result, employers seek to limit how relief is granted—for example, to offer relief in a way that demeans the recipient and so serves as an example to deter others from seeking aid—and to withdraw much of the relief when the crisis has passed, in order to force people back into the private-sector labor market. Hence Piven and Cloward discover cycles of expansion and contraction in the welfare state that reflect in various ways the instability of the business cycles of boom and bust, the waxing and waning of disorder as people respond to this instability, and the business-government relations around this issue.

Piven and Cloward find evidence for their thesis in the first great expansions in the American welfare state that occurred in response to the mounting protests of the unemployed during the Great Depression. Electoral upheaval, combined with sustained and growing protests, prodded politicians to establish the first real national relief efforts and welfare state programs in the United States. But Congress designed these programs to be as conservative as

possible, denying many of the most needy long-term relief and government aid. The emergency relief provisions of Franklin Roosevelt's New Deal lasted only until World War II revived the national economy, while the more permanent welfare state measures under the 1935 Social Security Act survived. These permanent measures, however, provided a mixed legacy of government help for needy Americans, especially in barring many poor Americans, particularly African-Americans, from access to many of the most beneficial programs.

Later, the civil rights and urban protests during the 1960s precipitated another round of welfare state expansions under Lyndon Johnson's Great Society and the War on Poverty. The Johnson administration designed some of these new efforts to finally extend aid to African-Americans, though Congress expanded programs for middle-class whites as well. Spending for the Vietnam War diminished the funds available for a domestic War on Poverty, and many of the programs targeting blacks came under attack almost immediately. Once the protests subsided, business mobilized to blame welfare state expansions for the decline in business profits during the 1970s. Ronald Reagan, as a candidate and then as president, engaged in a full-throated attack on lazy and morally lax welfare recipients as exemplifying everything that was wrong with the welfare state. Business and political attacks thus prepared the way for cutbacks in these programs.

As with Polanyi and others, Piven and Cloward comprehend that it is the tensions between business and government, and between capitalism and democracy, that propel this kind of government growth. Such factors also make this growth controversial, as the government is seen as meddling in market affairs. We adhere to Polanyi's realist view that markets are not freestanding entities, and that markets alone are simply too unstable and unreliable to provide the basic necessities of life for all citizens. Government officials, unlike their market counterparts, are responsible for securing order and stability for the entire society. Especially in democratic societies, they have to be at least somewhat responsive to public demands, particularly when, as Piven and Cloward explain, public disorder rises in response to serious economic problems. Thus welfare programs grow and expand as the result of various kinds of democratic pressures on government officials. Likewise, these come under attack, and often are cut back, as a result of business and employer pressures. The welfare state, by serving the nation's most vulnerable citizens, demonstrates the degree to which democracy can trump capitalism, at least in this limited way. In that regard, the threat to private-sector labor relations also ensures that its programs will remain controversial and its recipients stigmatized, with both vulnerable to attacks.

The Exceptionalist American Welfare State

While welfare states are universal attributes of industrial societies, among these societies, the United States has the least extensive welfare state guarantees, and welfare state programs are more controversial in America than elsewhere. Compared with other major industrial nations, the US government spends less per capita, covers fewer persons, and is the only nation not to have national health insurance or universal housing supports. Because of, and reinforcing, the relatively limited governmental supports, the United States has a very large private system of social welfare and insurance benefits, maintained through public funds (tax expenditures), and this dual system of public and private provisions results in what Jacob Hacker has called a "divided welfare state." The United States is unique in the large number of its workers covered by private health, pension, and disability plans.

As of 2001, almost half of US workers had access to a private pension plan alongside the public system of Social Security benefits, while two-thirds of US citizens are covered by employment-based private health plans (versus fewer than 70 million, or about one-quarter of Americans, who have government coverage). Employers and other private providers thus account for more than a third of US social welfare expenditures, much higher than the 10 percent average for other industrialized nations. Private plans are funded through mostly unseen tax subsidies, and they are run by private parties (employers, and private insurers and providers). As a result, these plans can be much less secure than public ones. For example, private plans are provided through employers who may go out of business, or workers may be laid off or move on to other jobs, thereby endangering benefits they have gained.[5]

In addition to its divided public and private social provision, the US welfare state differs from most other welfare states in its strong distinction between "worthy" and "unworthy" recipients of aid, based on whether one has a particular type of employment history. When many Americans think of welfare, they think of only part of the welfare state, that part that is seen to be handouts for the nonworking poor, which primarily serves mothers (or some single-parent fathers) and their children. For many Americans, this program, now known as TANF (Temporary Aid to Needy Families), has become a stand-in for much of the rest of the welfare state, and it attracts the bulk of critical attention, despite the fact that the majority of its recipients are children. The very organization of the exceptionalist US welfare state places "worthy" recipients—those with a regular and formal employment history—into *social insurance* programs. Those without such a work history (for example, temporary or seasonal workers, and those, like stay-at-home mothers, whose work is unpaid) are shunted into *social welfare* programs, which have fewer and lower benefits,

tighter eligibility restrictions, and whose recipients are more easily stigmatized and held in contempt. This sets the United States apart from other advanced industrial nations in leaving the poorest and most vulnerable of its citizens more exposed to the ups and downs of the market economy than the general population.[6]

Social insurance, including unemployment insurance, workers' disability insurance, Social Security pensions, and Medicare health coverage, is similar to any other type of insurance, but here, employers and employees pay into an insurance pool to cover certain eligible workers against the risks of on-the-job injury, old age and infirmity, or involuntary unemployment. Social welfare, on the other hand, is awarded to persons based on need, regardless of their work history, and includes programs like the supplemental nutrition assistance program (SNAP, formerly known as "food stamps" until the program was renamed in 2008), supplemental security income (SSI), and "welfare" (TANF). People have to pass a means test (prove their income is low enough) to access benefits.[7]

Controversies over the Welfare State

The distinction between social insurance and social welfare reflects and reinforces a greater degree of conflict and controversy over the welfare state in the United States than in other nations. The controversy often centers on whether issues of poverty, unemployment, and basic need are a reflection of structural or individual factors. Many Americans are encouraged to focus on the moral failings of the individual to explain poverty and unemployment, leading to greater opposition to welfare state programs in the United States than elsewhere. Many Europeans, however, understand these problems in terms of structural factors (e.g., a lack of jobs, substandard education, recessions, economic restructuring) and so more readily support public policies to address poverty and unemployment.[8]

Conservative opinion is more prevalent and organized in the United States, and it adheres to an understanding of poverty and unemployment that emphasizes the individual's responsibility for his or her condition. In this view, the poor and the unemployed often have only themselves to blame for their condition, and offering them benefits will just encourage further dependency on public provisions and reinforce the behaviors (like laziness and moral shortcomings) that led to their problems in the first place. Public support should, in this view, be limited to those suffering because of exceptional circumstances. Ironically, despite the prevalence of this sentiment, most Americans strongly support the welfare state. As Martin Gilens has noted, "The American public consistently expresses a desire for more governmental effort, and higher levels of spending, for almost every aspect of the welfare state."[9]

A key issue is that many Americans also feel that some aid recipients are undeserving and have come to think of the welfare state in such terms. Gilens believes this has to do with racial stereotypes—"the centuries-old stereotype of blacks as lazy remains credible for large numbers of white Americans"—and the related, mistaken view that blacks are the primary recipients of social welfare. The division of welfare state programs into social insurance and social welfare reinforces these attitudes, since recipients of Social Security and unemployment insurance, for example, are not thought of in racial terms. Still, Americans distinguish between programs that are considered handouts, such as TANF and SNAP, and programs that are thought to offer the poor and the unemployed a hand up, such as Head Start's early education programs, job training, and government-funded day care. Americans want more done in terms of supporting the poor, to help them get on their feet and help them stay there, but they express impatience and scorn for able-bodied recipients, whom they view as dependent on government aid.[10]

The conservative view of welfare as reflecting individual moral failings, and the related specific hostility toward certain recipients, has been very influential in shaping the programs and categories of aid within the American welfare state, including the important distinction between worthy and unworthy classes of welfare state recipients. Conservatives won a major victory in the Clinton-era rollback of the guaranteed right to welfare for the poorest Americans. With the 1996 welfare reform law, the poor in the United States no longer have any guaranteed right to public support. By 2015, in a piece entitled "Electing to Ignore the Poorest of the Poor," a *New York Times* economics columnist could write that one in twenty Americans lives in desperate poverty (defined as falling below 50% of the poverty line, or poverty threshold) even with the government benefits, however meager, they receive. "No other advanced nation," the writer notes, "tolerates this depth of deprivation." Welfare "reform" and the high levels of impoverishment set the United States apart from other nations. Referred to by many as a "semi-welfare state," as "truncated," as a "laggard," or as "incomplete," the United States developed national governmental welfare responsibilities later than other industrial nations—during the New Deal period of the 1930s—and developed them in a more fragmented manner than elsewhere.[11]

The New Deal and the Origins of the National Welfare State

National responsibility for social welfare was not established until 1935, when the United States became the last of the major industrial nations to extend such protections on a national level. High unemployment and the associated human

misery caused by the Great Depression sparked the establishment of permanent national welfare state responsibilities. Even then, benefits were categorical (limited to specific categories of individuals), rather than extended as a universal attribute of citizenship, and many types of social provision remained decentralized, so that individual states, not the national government, could set benefit levels and determine eligibility. Health insurance was not among the guarantees extended to US citizens.

As the Great Depression's economic devastation overwhelmed private, local, and state charity efforts, the national government stepped in to relieve some of the suffering. Breaking the precedent of local responsibility for relief giving was not easy—after all, Roosevelt's predecessor, Herbert Hoover, had resisted national relief giving through three-and-a-half years of worsening economic conditions. Hoover's reluctance to act was based on his own ideological convictions about the corrosive effect of national relief giving. But there were many factors accounting for the fact that three years into the Great Depression, with unemployment reaching 50 percent in places, there were almost no mechanisms through which the federal government could aid needy citizens. These factors included the limited legacy of national relief giving; the political fragmentation of the US constitutional system; a programmatically weak two-party system; the weaknesses of organized labor; the existing, conservative Republican and business dominance of national politics; and the hegemony of a laissez-faire ideology that discouraged governmental interference with market processes.

Prevailing ideological assumptions about laissez-faire and personal responsibility for one's economic plight slowly but surely became undermined, however, as the economy did not recover, as states and localities went bankrupt and looked to the national government for help, and as the suffering caused by the Depression spread so widely. Mass protest movements by those who suffered, including the unemployed, workers, and the aged, followed the overthrow of the Republicans in the presidential election of 1932 and the victory of a Democrat, Franklin D. Roosevelt, who had raised popular expectations with his promise of a "new deal" for the "forgotten man at the bottom of the economic pyramid." In turn, Roosevelt's aggressive early interventions on behalf of large banks and big industrial firms undermined the ideology of a free market system successfully running according to its own laws. Economic collapse quieted state-level resistance to national intervention, while a newly strengthened Democratic Congress deferred to presidential action. Business power waned in the wake of the economic collapse. It was difficult to argue against government action when the private economy had failed so completely, and when many Americans blamed business for the Depression.[12]

Roosevelt, under pressure from an increasingly mobilized and agitated populace, moved to preempt local responsibility and initiate a national program of

direct relief and work relief for the needy and unemployed, putting people to work in some programs and providing direct aid through others. First off, Roosevelt signed the Federal Emergency Relief Act (FERA) into law. It "broke all precedents in American relief giving" simply by having the national government, for the first time, assume overall responsibility for the economic welfare of its citizens. FERA delivered direct cash and work relief to some 20 million destitute Americans during the winter of 1933/34. Even before FERA passed, Roosevelt had pushed Congress for a Civilian Conservation Corps (CCC) to provide jobs for unemployed youth in forestry and conservation programs. Peak employment under the CCC reached 519,623 in August 1935, and the CCC generally employed between 300,000 and 400,000 young men annually until World War II. Since Roosevelt hated direct relief (cash assistance), he turned quickly to a work relief program, the Civil Works Administration that employed 4 million Americans from 1933 to 1934.[13]

These first efforts produced an astonishing turnaround in the federal government's responsibility toward its citizens. By the winter of 1934, the nation's government was providing benefits to over 8 million households, touching over 22 percent of the population. These early national relief efforts proved to be popular yet controversial. Roosevelt himself was uneasy with the notion of direct relief, business interests complained that work relief was undermining their ability to hire cheap labor while increasing their tax burdens, and states and localities complained about national authorities preempting local authority. Roosevelt terminated direct relief as quickly as possible, though a revamped system of work relief continued until World War II finally led the nation out of the Depression. This program, the Works Progress Administration (WPA), employed a monthly average of 2 million people (about 20%–30% of the unemployed between 1936 and 1941). Almost 80 percent of the work focused on roads, bridges, reservoirs, sewers, buildings (schools and other public facilities), and playgrounds. WPA workers constructed 595,000 miles of permanent roads, 75,000 new bridges (with 45,000 existing bridges repaired), 256 new airports, almost 6,000 new playgrounds and athletic fields, and 5,584 new schools (with 31,629 schools repaired). The WPA also put to work artists, writers, playwrights, directors, and actors under the Federal Music Project, the Federal Writers Project, the Federal Theater Project, and the Negro Theater Project.[14]

Roosevelt regarded many of the emergency New Deal programs to be temporary measures, destined for elimination by Congress as soon as the worst of the emergency had passed. But since Roosevelt wanted a more permanent system of economic security, in 1934 he established a Committee on Economic Security, tasked with developing a legislative agenda for a comprehensive and permanent program to protect the nation's citizens "against the hazards and

vicissitudes of life." The resulting 1935 Social Security Act (SSA) established the foundation for America's welfare state today.[15]

The SSA created a number of different programs, including (1) a nationally administered old-age insurance program; (2) an unemployment compensation program run by the individual states; and (3) a system of public assistance, funded by national and state monies but run by the states. It separated national economic security into two broad categories: social insurance (programs like Social Security) and public assistance (welfare) programs. Other nations blended social policies in ways that benefited the poor and non-poor alike, obscuring the distinction between social insurance and social assistance that remained at the heart of the US system.[16] In the United States, social insurance programs designed for the middle class—Social Security and unemployment insurance, for example—carry little stigma. At the same time, programs that serve the poor in the United States have been much more difficult to defend and protect. These programs remain controversial, and their recipients are often stigmatized as lazy and undeserving.

RETIREMENT SECURITY

Old-age insurance (OAI), what we think of as Social Security, was the one truly national and innovative part of the new apparatus. Roosevelt worried about keeping such a system of old-age pensions financially solvent and politically popular. So his advisors decided on a self-funding, contributory system that would form a secure contract between an individual and the national government. Citizens would each have their own Social Security number, to instill in their minds their right to a Social Security pension. This would therefore make it much more difficult for future politicians to threaten these benefits. Roosevelt also wanted the system, which was based on payroll taxes and employer contributions, to remain self-sustaining, rather than be a drain on general revenues. Hence workers pay into a separate Social Security trust fund.[17]

Still, not everyone would have access to the program. It was necessary to have been employed in a particular type of job for a specific amount of time to qualify for benefits. Agricultural and domestic labor were exempt, for example, due to congressional pressure from southern Democrats. This meant that most women, and even most blacks, were originally excluded from Social Security protections. OAI originally covered just over half the employed workforce. Benefits were not to be paid out until 1942, though, because of the rapid accumulation of reserves, Congress amended the act in 1939 to allow payments in 1940. The 1939 amendments also broadened the program to include survivor benefits and benefits for dependents of retired workers, so if a contributing worker died, the survivors (spouse and children) would be entitled to that

person's benefits. This weakened the supposed link between contributions and benefits and increased the similarities between Social Security and social welfare, since one need not have contributed to the system directly to gain access to benefits. With these changes, OAI became known as Old Age and Survivors Insurance (OASI).[18]

UNEMPLOYMENT COMPENSATION

The other insurance portion of the SSA involved unemployment compensation. Development of this program proved to be much more controversial than old-age insurance did, both because unemployment is more difficult to define than old age, and because influential employers—from industrial firms to southern agricultural interests—sought to limit workers' access to unemployment compensation. In the end, policy makers built a mixed system that was similar, in some ways, to the system of old-age insurance. Workers had to contribute to an unemployment compensation fund to qualify for benefits, and Congress excluded many workers from protection. It was also similar, in other ways, to public assistance, since the states set their own eligibility standards and the level of benefits, along with any waiting periods or time limits on the distribution of benefits. The provision for state and local administration reassured southern Democrats that the new law would not disrupt their region's system of racial domination. Industry leaders were reassured that benefit levels were set low enough, and their duration limited enough, to not undermine an incentive to find a new job.[19]

POOR RELIEF

Public assistance was not given much attention by the Roosevelt administration, but it was given priority by Congress, because of the great economic suffering that continued to plague the nation. Congress divided public assistance between old-age assistance (OAA), aid to dependent children (ADC), and aid to the blind. Roosevelt and his advisors knew that a contributory, old-age insurance program would do little about the current problems of the aged poor, and so they provided national matching grants to the states to cover various OAA programs. Southern Democrats insisted that states retain discretion over who was eligible for the pensions, as well as over the size and duration of any benefits. Regardless of how low their benefit levels were, states received 50 percent of the pension's cost from federal matching funds. And national money poured in to build up state programs—$430 million in 1939 alone. By the end of 1939, 1.9 million elderly (a quarter of the aged population) received OAA pensions, a tenfold increase from 1934.[20]

ADC was likewise established as a federal-state matching grant system. Mostly an afterthought at the time, ADC—later called Aid to Families with Dependent Children (AFDC)—was based on the existing state-level "mothers' pensions" or "mothers' aid" programs. ADC was designed to help the children of widows. While an early draft of this program had defined "dependent children" broadly, to cover all children in severe need, Congress made the absence of a parent, and not simple need, a condition for aid, in order to restrict eligibility. Again, southern Democrats—fearing that eligibility and grant levels set by the national government would undermine low wages in the South, and that national supervision would overrule the exclusion of most blacks—had their way. By the end of 1939, some 760,000 children, a three-fold increase from the prior mothers' pensions programs, received ADC benefits. Still, eight states had no ADC program, and many of those that did imposed restrictive qualifications regarding the mother's character. Local supervision ensured that poor relief would be administered as harshly as possible, especially when the needy poor were black.[21]

THE LIMITS OF A WATERSHED MOMENT

Roosevelt's planners had also hoped to create a national system of health insurance, but this proposal was defeated by the powerful American Medical Association. Although Congress designed the public assistance provisions to care for those left behind by the limited coverage of the SSA's social insurance policies, there remained serious gaps in that coverage. The public assistance provisions did not cover intact families, employable men, and single persons, on the assumption that once the economy recovered, most of these poor would find jobs. And many of those who did qualify for coverage were denied benefits, either based on the prejudices of local relief agencies or simply because there was not enough money to cover all eligible recipients. Although these programs are entitlements in that anyone defined as eligible is "entitled" to coverage, local authorities often proved to be more hostile to potential recipients than did the more distant national government.

Together, the programs of the Social Security Act represented the long-term legacy of New Deal social reform efforts. Other New Deal initiatives that provided direct relief and work relief were cancelled once World War II revived the economy. Still, even their temporary existence represented a tremendous expansion of the national government's responsibility that is easily documented by the growth in spending. In 1913, all levels of government spent about $21 million on public aid. By 1932, at the height of the Depression yet before Roosevelt and the Democrats took office, the amount had increased to $208 million. By 1939, it had increased twenty-five times, to $4.9 billion. While public aid

consumed only 1 percent of all government expenses in 1913 and 1923, by 1933 it stood at 6.5 percent. And while state and local spending increased almost ten-fold from 1933 to 1939, the national share of public aid spending jumped from 2.1 percent in 1932 (before the New Deal) to 72.5 percent by 1939.[22] The New Deal was surely a watershed moment in modern American history.

The Postwar Welfare State

While Britain initiated a bold and inclusive welfare state agenda in the immediate post–World War II era—one that guaranteed "cradle to grave" protection for all citizens—the United States was busy creating a new set of temporary programs for an exclusive class of beneficiaries: returning World War II veterans. Benefits under the 1944 Servicemen's Readjustment Act, commonly referred to as the GI Bill of Rights (or GI Bill), included money for education, access to special unemployment benefits, and guaranteed home and business loans. These special benefits existed alongside the usual veterans compensation, service-connected pensions, and medical benefits. Veterans benefits covered one-third of the population just after World War II, and until the mid-1950s, these benefits delivered more money to citizens than Social Security. The Korean War added a new group of recipients to the education program, and the Vietnam War led to the 1966 Veterans Readjustment Act, guaranteeing enhanced benefits to a new generation of recipients.[23]

Hopes of creating some form of national health insurance for the general population after World War II were dashed when the American Medical Association waged an expensive and sophisticated campaign to taint President Harry Truman's proposal as "government-controlled" or "socialized" medicine. Progress was made, however, in other areas. Although national planners had assumed that the SSA's state-level public assistance programs would wither away over time, they remained large and continued to grow through 1950, when public assistance spending reached more than three times the amount spent on Social Security. National policy makers worried that Social Security would soon be made superfluous if current trends continued. Changes came in 1950, as Congress added regularly employed agricultural and domestic workers, plus the self-employed, to the Social Security system. Congress also raised Social Security benefits by almost 80 percent, more than keeping pace with the price inflation of the 1940s. The changes worked their magic, as the number of people receiving Social Security surpassed the number receiving old-age assistance for the first time in February 1951 (from 1945 to 1960, Social Security coverage expanded from 1.3 million to 14.8 million persons). A later change (in 1956) would move the disabled into the national Social Security system.

Those who were left behind—primarily single mothers with children, covered under Aid to Dependent Children—inherited a program increasingly vilified as "welfare."[24]

THE PRIVATE WELFARE STATE

Another important development in the American welfare state during the 1950s was the expansion of private fringe benefits. After the SSA passed, corporations created new private pension programs for their higher-paid, white-collar employees as a supplement to the public Social Security pensions, both in order to retain valued employees (employees could lose their benefits if they changed employers) and because of the tax benefits the business firms gained as a result. After the war, blue-collar workers got into the act, as their unions made fringe benefits a key part of their demands. Company pension plans grew enormously, beginning in the immediate postwar years (see chapter 3).

Workers covered by private pension plans numbered 4.1 million in 1940, more than doubled (to 9.8 million) in 1950, and almost doubled again (to 18.7 million) in 1960, totaling 41 percent of all private-sector workers. Private plans grew as capped Social Security pensions and a lack of national health insurance led unions to demand pension and health care benefits through their collective bargaining agreements. Most large corporations readily acquiesced, both because of the tax benefits they gained (these private plans were tax-deductible, meaning the public picked up the tab for them), and because companies granted such private benefits in lieu of wage increases. As an added incentive to the major corporations hostile to a larger amount of public-sector benefits, much of the union rank and file poured their energies into expanding and protecting their private welfare benefits, instead of supporting expanded public-sector benefits.[25]

The existence of this "private" welfare state—one heavily subsidized by the national government through tax breaks—marks another of the exceptionalist qualities of the United States, as over 23 percent of total social welfare spending is covered by employee fringe benefits. Private pension programs became subject to various abuses. In some cases, promised pensions disappeared as companies failed, plans were insufficiently funded, or plan managers raided pension funds for other purposes. As a result, government oversight of private plans gradually increased until Congress created the Pension Benefits Guaranty Corporation (PBGC) in 1974, to publically insure increasingly vulnerable private pensions.[26]

Guaranteeing the private pensions of 40 million workers has recently become a growing headache for the national government. From 2000 to 2004, the PBGC's obligation to pay off private pensions more than doubled, from

$10 billion to $23.5 billion, and experts assume that this will skyrocket to $100 billion or more within a few years as businesses find it easier to declare bankruptcy and dump their pension obligations on the government. (As of the middle of 2016, PBGC had liabilities of $164 billion.) The shift to private benefits deepened the federal government's commitment to underwriting and guaranteeing a private system that primarily benefits upper-income Americans, especially as unionization declined precipitously after 1979. The private system operates under the radar of American politics, since it would be difficult for politicians to openly promote or defend publically subsidized programs, like private pensions, for affluent Americans. Nonetheless, two-thirds of the $100 billion in annual tax subsidies for private pension programs goes to the top 20 percent of American income earners.[27]

RACE AND THE WELFARE STATE

Up to the early 1960s, the national government, directly and indirectly—through the welfare state, tax expenditures, and veterans programs—provided many Americans with a better education, better jobs, better homes, health care, and pensions. Yet dividing the welfare state into social insurance (Social Security and unemployment compensation) and social welfare (public assistance) left many Americans relatively untouched by the national government's helping hand. For no single group was this truer than for African-Americans.

Scholars find obvious differences between how blacks and whites are treated in the US welfare state. Beginning with the New Deal, blacks were granted fewer relief benefits than whites. Moreover, because a number of welfare state programs depended on one's employment status, and blacks were excluded from many of the good jobs that were linked to these programs because of their race, blacks fell behind whites in access to the generous social insurance programs. More often than not, blacks were left to the harsher and more restrictive administration of the various state public assistance programs and the less benevolent ADC and public housing programs. Even here, whites fared far better under state and local administrations; blacks were never able to get the aid they needed or were entitled to. For example, in 1960, states denied 80 percent of illegitimate nonwhite children ADC benefits, while only 20 percent of illegitimate white children were so denied.[28]

The postwar GI Bill benefits exacerbated the divergent treatment of the races, as blacks had often been excluded from military service altogether, because of segregation within the armed forces and the resistance of most military leaders to utilizing black servicemen and women. Poor health and less education, due to both the greater degree of poverty among blacks and segregationist policies, also hampered their ability to be admitted into the service, ensuring that the

GI Bill served whites in much higher percentages than blacks. White veterans reaped the very generous benefits of education aid, housing and small business loans, extended unemployment compensation, and special pensions that "compensated for the holes in the public safety net." In addition, since blacks remained less likely to be employed in union jobs, they also lost the work-related private welfare benefits of pensions and health care. Lastly, many blacks, especially black women, employed as agricultural and domestic laborers remained outside the unemployment compensation system. When black women applied for the programs they were entitled to, including ADC, local authorities hounded them throughout the 1950s by a relentless campaign of welfare purges designed to vilify and scapegoat them as "women whose whole business is having illegitimate children."[29]

Programs like public housing often could hurt blacks more than they helped. The Housing Acts of 1949 and 1954, designed to create public housing and spur urban renewal, respectively, produced deplorable results. As Jill Quadagno finds, "By 1960 more than 400,000 homes had been destroyed [under the urban renewal program] but only 10,760 low-rent units built," and "the public housing that *was* built was racially segregated and confined almost entirely to [impoverished] central cities." In the end, as Michael Brown concludes, the American welfare state differed from those elsewhere, since it "was defined as much by black and white as it was by rich and poor." It was these discriminatory effects of the existing welfare state that the Great Society programmatic expansions of the 1960s were meant to deal with. To an extent they did, as new programs targeted the most impoverished urban youth. Still, while many of the new services and in-kind benefits helped a significant number of blacks for the first time, ironically (or predictably), the welfare state expansions ended up helping middle-class whites even more.[30]

UNDERSTANDING THE WAR ON POVERTY

Despite the postwar prosperity of the United States, poverty stubbornly persisted throughout America. Thirty-nine million Americans, or 22 percent of the population, remained in poverty in 1959, while many millions more hovered near that level. The poor were urban and rural, white and black (78 percent of the poor were white), young and old, male and female, many of whom had jobs or had worked all their lives. It was truly a national problem that grew to scandalous proportions for the nation that functioned as the leader of the free world and the most affluent nation by far. With poverty came malnutrition, substandard housing, and inadequate levels of medical care. For many, a critical lesson of this poverty amid affluence was that the private market could not,

by itself, diminish the continuing high levels of poverty in America, so some kind of governmental commitment was required.[31]

This substantial and persistent level of poverty became a focus for Presidents Kennedy and, especially, Johnson, Democrats who both sought to confront the massive economic dislocations of the postwar period. Agricultural mechanization had displaced millions of southern workers, while suburbanization, as well as industry's move to the suburbs and to low-wage areas, produced trouble for the nation's rust-belt cities. Government leaders needed to be responsive to the growing displacements and to the emerging urban unrest that accompanied these changes. The problems proved to be significant enough that even President Richard Nixon, a Republican, promoted his own welfare state expansions.

Conditions were very different then than they were during the New Deal, since, unlike the economic depression of the 1930s, this period was marked by economic growth and expanding affluence. Affluence made the disparities between rich and poor more glaring—especially in the context of the United States' Cold War rivalry with the Soviet Union. Economic prosperity also moderated traditional business opposition to government action. Corporations began to understand that government action did not spell peril for corporate profits. Social and military spending remained important props for the economic expansions of the 1950s.

Nevertheless, as in the 1930s, the more immediate prod to President Johnson's Great Society and the War on Poverty was a growing upsurge of social disorder, especially urban unrest rooted in widespread racism, inequalities, and despair. Agricultural modernization in the South displaced millions of southern blacks. Their subsequent, unprecedented massive migration from a racist South to northern cities was no improvement, since virulent racism there, and the shift of industry to the suburbs, still precluded many black from gaining secure jobs. Displacement and discrimination produced the preconditions for a huge upsurge in social disorder. In addition, blacks had migrated to large cities in states that were crucial to winning the presidency, enhancing their importance to national politics. As in the 1930s, economic dislocation fed growing social disorder and a programmatic shift in the welfare state.[32]

What also made the new expansions in welfare state programs possible were the substantial Democratic electoral gains in 1964. Besides a huge victory for Lyndon Johnson, Democrats in Congress swept to a two-to-one advantage over the Republicans, effectively eliminating a congressional veto over social policy wielded by the conservative coalition of Republicans and conservative southern Democrats. President Johnson, with Franklin Roosevelt as his hero and guiding example, saw it as his mission to advance the reform hopes of

the New Deal. This goal was also linked to the need to shore up Johnson's political support among blacks, who had become a critical voting bloc in key electoral states.

Still, the welfare state expansions of the 1960s, however ambitiously conceived and promoted, remained limited by President Johnson's choices of how to tackle the continuing problems of poverty, racism, and exclusion in America. Poverty was not thought of as a problem arising from the very organization of the economy, or from the power relations of a political economy now dominated by large corporations. Johnson's choices were premised on the acceptance of large corporations in American life, and he considered no reshaping of the existing relationship between the public and private sectors.[33]

Unlike parts of the New Deal, business would be catered to, not threatened. Johnson's reform efforts were carefully calibrated to spend few new funds that might lead to a budget deficit that, in turn, would push businessmen into opposition to government policies. Johnson viewed economic growth as the elixir and cure-all for what ailed America, and business could provide that growth only if Johnson limited the scope and scale of the antipoverty initiatives and minimized any spending commitments. Although Johnson, in his first State of the Union address, would declare "unconditional war on poverty," it was a war, Brown reports, that he "would have to fight . . . on the cheap." Johnson's domestic war was addressed to lifting up the poor, but the programs that proved to be the most popular and long lasting were those that served the more affluent, white, middle-class portion of the population.[34]

Even many of the education and housing programs intended to serve poorer communities and individuals instead ended up doling out more money to middle-class white, suburban communities. The point is that while Johnson's Great Society and the War on Poverty were indeed watersheds in expanding the government's commitment to lifting more of the nation's population into economic security, these programs still were constrained. They remained limited to what was acceptable to the nation's business community. They thus were organized into the same pattern of social insurance versus social welfare that hampered the New Deal's programmatic successes. There would be no public jobs program, and many of the other programs were similar to the emergency relief programs of the New Deal, in that they could be rolled back when the political conditions changed. Once again, middle-class whites proved to be the biggest winners.

The 1960s and 1970s

Scholars divide the growth of the welfare state during the 1960s and early 1970s into three general categories. First, programs that delivered *services*

were designed to improve the skills of impoverished persons and enhance their employability, such as *Head Start (* refers to new programs) and other education programs, and *job-training/job-creation programs. Second, programs that delivered *in-kind benefits* were tailored to ensure that basic nutritional, medical, and housing needs would be met, including *Medicare and *Medicaid, *SNAP (food stamps), and the public housing and *rent supplement programs. Third, programs that were intended to provide *direct cash aid*, including the categories under the Social Security Act, such as Aid to Families with Dependent Children (a revamped ADC), supplemental income programs for the impoverished elderly, Social Security, and unemployment compensation. The impact of this new government commitment was quite dramatic, as poverty levels dropped from 22 percent in 1960 to 9 percent by 1972. (With the Reagan cuts in poverty programs, the poverty rate rose to 13.5% by 1990.) While some argue that the decline in poverty was simply due to economic growth, others demonstrate that gains were "accomplished, almost entirely, by the government."[35]

NEW SERVICES

President Johnson, wary of direct cash aid or a government jobs program, emphasized new services to improve an individual poor person's readiness to gain employment. He chose job training over a public jobs program, a strategy designed to "change the characteristics of the individual rather than the structure of the economy." New programs, such as the Jobs Corps and the Neighborhood Youth Corps, targeted the most disadvantaged youth through the creation of rural "conservation camps" (modeled after the New Deal's Civilian Conservation Corps), urban boarding schools, a work-training program, and a college work-study program.[36]

Johnson's 1965 Economic Opportunity Act created an Office of Economic Opportunity that emphasized services designed to improve the skills of impoverished persons and enhance their employability, and other services to improve conditions in inner-city ghettos. The act funded, among other services, neighborhood health centers, emergency food benefits, job and literacy training, alcoholic counseling, drug rehabilitation, help for migrant workers, and legal services for the poor. Money also went to fund rural poverty programs and create Volunteers in Service to America (VISTA), a program designed to recruit volunteers to work with Native Americans, migratory workers, the mentally ill, and the developmentally disabled.[37]

As a complement to his War on Poverty's job-training programs, Johnson also pushed for greater national support for preschool, elementary, and secondary education. In 1965, Congress passed his Elementary and Secondary

Education Act (ESEA), allocating over $1 billion for compensatory education programs to aid poor and low-achieving children (Johnson's own budget bureau estimated that $5–$10 billion would be needed to do the job, so the allocation was much less than what was necessary). Nonetheless, an ongoing national commitment to education had been made. Johnson even remarked, "This is the most important bill I will ever sign." But education monies went through state school officials, who distributed the funds according to their own needs and interests, rather than to meet the needs of the poor. As a result, money flowed to many affluent suburban districts, which had the political clout to claim a share of the new funds. A 1977 study showed that two-thirds of students in ESEA programs targeted for the poor were not, in fact, poor. Johnson's ESEA also allocated money for a Head Start preschool education program, targeting poor children. Starting out at $150 million, this program now spends over $7 billion and serves some 927,000 children (although still only about one out of five impoverished children).[38]

While these new service initiatives were ambitious and visionary, they remained insufficient to completely address poverty. While estimates for full funding to lift the nation's poor from poverty ran to $11 billion or more a year, only $500 million in new money was appropriated for the task. These programs represented only a small part of the antipoverty initiatives from 1961 to 1976, and expenditures on these programs averaged less than 3 percent of all federal social welfare expenses. Though most of the programs did not survive—Richard Nixon abolished the Office of Economic Opportunity in 1974—a few did, such as Head Start, a program that enjoyed broad support and is easily one of the most successful antipoverty programs to come out of the 1960s.[39]

IN-KIND BENEFITS

Welfare state expansions also occurred with in-kind benefit programs—such as Medicare, Medicaid, and SNAP—and through public housing and rent supplements designed to ensure that the basic nutritional, medical, and housing needs of the nation's citizenry would be met. These benefits grew quickly during this period; between 1964 and 1974, in-kind benefits as a proportion of national welfare spending "mushroomed from 3 percent to nearly 20 percent."[40]

Housing

Housing represents a particularly vilified area of welfare state policy, bringing to mind crime-ridden, high-rise public housing units. Yet housing benefits represent less than a quarter of what the national government spends on low-income citizens. President Johnson wanted to expand the 1949 Housing Act that, while funding public housing projects and urban renewal, had produced

few gains for the poor. Public housing became notorious as high-rise segregated ghettos, while urban renewal projects became criticized as "black removal" projects to clear potentially valuable downtown urban areas of dilapidated yet thriving neighborhoods. Spurred by terrible rioting in the Watts area of Los Angeles, Johnson gained congressional approval for a cabinet-level Department of Housing and Urban Development in 1965, along with new funding for public housing, urban renewal, and a program of rent supplements for the very poor. Pressure from conservative Republicans and southern Democrats limited the reach and potential of these programs, but in 1968, after two years of urban rioting, a "sweeping but hastily conceived" Housing and Urban Development Act passed Congress.[41]

Besides expanding rent supplements, the 1968 act sought to increase home ownership by providing low-income families with affordable, federally insured mortgages, as well as providing federally subsidized mortgages for the construction of low-income rental housing. The housing law prohibited high-rise public housing projects and, together with part of the 1968 Civil Rights Act (Title VIII, commonly known as the Fair Housing Act), was specifically intended to break up segregated inner-city ghettos in order to disperse low-income housing into mixed-income neighborhoods. Still, although Congress intended for the law to encourage the construction of new housing for low-income black families—those most distressed and at risk in urban ghettos—astonishingly or not, most new housing was built in the suburbs for white families. The 1968 Housing and Urban Development Act produced some successes, but most scholars recognize that the loosely written and underregulated law proved a windfall for bankers, realtors, builders, and real estate speculators. It subsidized white flight to the suburbs and promoted the gentrification of inner cities, the shoddy construction of inferior housing, and corrupt speculation in ghetto areas. These problems tainted the program's successes.[42] Good intentions, it seems, clashed with the realities of race and class power in America.

Currently, housing assistance is not a guaranteed entitlement, meaning that there are many more eligible families than there is money to help them. Only about 22 percent of eligible poor families receive housing aid. The dominant housing programs for the poor remain low-rent public housing and a system of HUD's Section 8 rent supplements. But cutbacks in housing assistance have resulted in a severe housing crunch for those at the bottom of American society. Housing programs are not funded anywhere near the amount required to help all the needy. This underfunding resulted in huge waiting lists for those needing housing assistance. For example, in early 2012, New York City had 163,965 families waiting for public housing, and 123,499 families waiting for Section 8 vouchers. As observers note, most of those in need simply give up and make do as best they can. The United States stands alone among industrial

democracies as having abandoned so many of its poor to the vicissitudes of the private housing market.[43]

Limited housing assistance to needy families stands in stark contrast, however, to the billions of dollars in aid (in the form of tax subsidies) granted to middle-class and affluent homeowners. On its federal income tax forms, the national government allows taxpayers to deduct the full cost of interest payments on home mortgages for their first home, and even their second home, along with deducting state and local property taxes and the interest on home equity loans. Ironically enough, the full cost (in terms of lost federal revenue) of these programs—which primarily benefit affluent Americans—is double what the government spends on low-income housing and rent supplements.[44]

Medical Care

Congress, with President Johnson's prodding, also enacted major expansions in access to health care. With health costs growing, and with only a portion of the US citizenry having private insurance coverage, Presidents Kennedy and Johnson pushed hard for some form of governmental coverage. Every other industrial nation had a system of national health care, but private insurance companies and the powerful American Medical Association (AMA) had worked tirelessly to prohibit national health care in the United States. What became known as Medicare was the latest in a long line of presidential and congressional proposals for extending health care to every American, which began with Franklin Roosevelt. Opponents pulled out all the stops when it came to opposing Medicare. According to one historian, "The AMA waged what was probably the biggest and costliest lobbying campaign in history to prevent passage of the law." Employing seventy publicists to vilify the latest governmental venture into "socialized medicine," the AMA and its doctors basically "threatened to go on strike and refuse to treat ill patients." But Johnson made Medicare his top priority. After Congress failed to pass a bill before the 1964 elections, Medicare became an election year issue. With a landslide win by the Democrats, Johnson now had the necessary votes, and Congress passed Medicare and Medicaid as a series of amendments to the Social Security Act on July 30, 1965.[45]

Medicaid was designed as health care for the needy poor, though eligibility standards ensured that not all the poor would qualify. Like Social Security, Medicare's Part A was financed through increased Social Security payroll taxes and administered through a separate trust fund within the Social Security system. Part B was financed through general revenues and individual premiums. Unlike other segments of the welfare state, Medicare benefited all elderly income groups—the middle class, the rich, and the poor—and so has remained very popular, despite the 1961 alarmist prediction of Ronald

Reagan (at that time an actor, who was serving as a spokesman for groups opposed to the introduction of Medicare) that the program would lead to a type of socialism that would "invade every area of freedom in this country." Within a decade, Medicare became so popular that no politician would dare challenge it.[46]

While extending health care to a vulnerable part of the population, the Medicare law did not establish a health care system that benefited all Americans. The elderly certainly gained access to universal health care, but the 1965 law conformed to the existing distinction between social insurance and social welfare by creating one program for all the elderly (Medicare) and another for the eligible needy poor (Medicaid). As with other welfare or public assistance programs, states retained the authority to determine Medicaid eligibility and benefits. Thus restricted access and benefits distinguishes Medicaid from Medicare. The Affordable Care Act (commonly known as Obamacare) sought to expand Medicaid coverage to most of the needy poor, and it did succeed in extending coverage to 15 million low-income Americans. But states must accept the expansion of the program, either through Medicaid or an alternative plan, and in 2016, nineteen states have refused, leaving almost 6 million of their low-income residents outside the system.[47]

Food, Nutrition, and Energy

A final expansion of in-kind benefits occurred in the area of food and nutrition. The Kennedy administration originally designed food stamps to help farmers (by encouraging the consumption of perishables) as much as help the poor. Congress expanded the program in 1964 to serve more than the most impoverished families, but even though the national government covered all the costs of the food stamps themselves, nine states refused to participate in the program. The Johnson administration did little to enlarge it, but President Nixon, fearing that Democrats would exploit the hunger issue for electoral gain, proposed a vast expansion of the program in 1970.[48]

The resulting 1970 Food Stamp Act transformed the existing food program from one designed to absorb surplus agricultural commodities into an income maintenance program to help the poor. Under the law, benefits were greatly expanded, while eligibility was loosened to include more than those in poverty (though 89% of all current recipients live in poverty), and food stamps came to serve a greater number of Americans than any other means-tested program. By 1975, this once-small program was providing benefits to over 17 million recipients. The program continued to grow during the 1980s, despite the Reagan administration's opposition. By 1994, one peak year, 28 million people received food stamps. By fiscal year 2000, however, the number of beneficiaries dropped back down to the 1975 level of 17 million persons. From 1994 to 1999, the

participation rate (those who take part in the program versus those who are eligible) had fallen seventeen percentage points, from 74 to 57 percent, as congressional Republicans cut $27.7 billion from the program with the 1996 welfare reform law. Expanding eligibility during the George W. Bush and Obama administrations, coupled with the effects of the 2008 economic collapse, led to a surge in the number of recipients, which increased from around 28 million Americans at the beginning of 2008 to the astonishing number of over 47 million through the end of 2013.[49]

Other nutritional programs begun or expanded during the 1960s include a school lunch program (supplemented by a smaller school breakfast program), special milk programs, and a summer food for children program, which, together, served 25 million children in 2000. In 1972, Congress expanded the school lunch program and created the Supplemental Food Program for Women, Infants, and Children (WIC) that assisted 7.5 million mothers and children in 2000. Altogether, more than half of America's children and infants are served by these programs.[50]

DIRECT CASH AID

While the new service programs associated with Johnson's War on Poverty gained much of the spotlight and attention during the 1960s and early 1970s, most of the real growth in welfare state expenditures occurred in the traditional programs of public assistance and Social Security.

Expanded Aid to Families with Dependent Children

Public assistance rolls grew as a greater percentage of eligible AFDC recipients claimed benefits. Still, massive growth in Social Security easily outpaced AFDC expansion. AFDC rolls rose slightly in the postwar years but "exploded" during the 1960s in response to growing protests by the poor, out-migration of blacks from southern states with restrictive public assistance systems to wealthier and more-liberal regimes in northern states, and federal court rulings that loosened access. These factors all contributed to a huge rise in recipients; the participation rate jumped from 33 percent of eligible families in the early 1960s to more than 90 percent by 1971. Altogether, the number of Americans on public assistance more than doubled from 1960 to 1974 (from 7.1 million to 14.4 million). Most of this growth came as the numbers participating in AFDC grew from 3.1 million in 1960 to 10.8 million by 1974.[51]

Expansions of AFDC and in-kind, means-tested benefits for the poor—such as food, housing, and medical aid—reduced poverty by 60 percent between 1960 and 1980, but public support for alleviating poverty weakened as economic problems grew during the 1970s. Business and conservative forces mobi-

lized to demonize "welfare" as one of the main causes for these troubles. Expenditures barely increased in the 1970s as states froze benefits and inflation soared, reducing the real value of these benefits. In the 1980s, expenditures did not grow at all. Expenditures were lower, in real terms, in 1991 than in 1975. The median state payment in 1970 for a mother with three children was $792 per month, while in 1993 the payment was only $435. (Individual states set benefit levels, and these benefits varied significantly. For example, in 1993, Alaska granted $923 per month, Connecticut granted $680, and Mississippi, $120.) By 1995, AFDC, always a relatively small program, represented only 1.1 percent of the national budget.[52]

Whatever we think about welfare in general, we must keep in mind that the costs of AFDC were relatively small, and that this program has served the vulnerable population of single mothers and their minor children (two-thirds of these welfare recipients are children). What is commonly thought of as "welfare" is a very small part of the overall welfare state, which is itself dominated by middle-class entitlements of the social insurance kind. But critics find it convenient to focus on welfare mothers, especially because the image of welfare as a program for minorities who spend their lives relying on government handouts remains fixed in many minds, despite the facts that the greatest number of welfare recipients are white, and that most women did not receive AFDC benefits for very long. As many commentators have noted, "welfare" has become a code word for politicians seeking to exploit racist sentiments in society. And the image of laziness, cheating, and fraud is easier to maintain when the target is portrayed as ghetto dwellers, rather than the elderly, the infirm, and the disabled.[53]

Expanded Social Security Benefits

Despite all the programmatic expansions for the relief of poverty, the biggest winners remained the elderly, as new and expanded Social Security and Medicare benefits took full hold. And social insurance programs—such as Social Security pensions, unemployment compensation, and Medicare—served four times as many of the non-poor as the poor. The great drop in poverty for the elderly certainly showed that committing money to problems can make a huge difference. In 1970, $30.3 billion in Social Security payments to the elderly represented more than ten times the payments for AFDC; by 1984, the differential was nearly $22 spent on Social Security for every $1 AFDC received. In 1972, Congress passed a 20 percent hike in Social Security benefits and indexed these benefits to the rate of inflation with annual cost of living adjustments, while AFDC benefits were never indexed in the same way. The combined benefit of AFDC and food stamps in 1992 produced an income well below the poverty level in all fifty states.[54]

In 1972, Congress created Supplemental Security Income (SSI). SSI separated the public assistance programs serving the aged, blind, and disabled from AFDC and established them as programs fully funded nationally (authority over AFDC remained with the states). Recipients receive a basic monthly benefit that is indexed to inflation, like Social Security and unlike AFDC. Generous national eligibility standards replaced restrictive state criteria, a fact that led to 2.8 million previously ineligible disabled, blind, or elderly persons gaining access to assistance (a 50% increase in coverage). The elderly represented the largest group of recipients when the program was formed, but the disabled represented 77 percent of the caseload by 1995.[55]

EARNED INCOME TAX CREDIT

The Earned Income Tax Credit (EITC) has become the national government's "fastest growing entitlement program and its most effective means of lifting children out of poverty." This program works through the tax system and is designed to alleviate poverty among the working poor. It is not, strictly speaking, means tested, although it is income tested, since benefits are available only to those whose income falls below a certain level. Benefits take the form of annual tax refunds to working-poor families with children, based on a worker's federal income tax return. Beneficiaries whose income falls below an established line can claim an EITC refund, and the amount they gain from the program decreases with respect to increasing income.[56]

EITC began in 1975 as a small program, but it tripled in size (in terms of the number of workers benefiting from it) by 1978, with its cost (in terms of lost federal revenue) rising from $2.5 billion to $27 billion. The real value of the program's benefits declined through the mid-1980s. But President Clinton spearheaded a major expansion of the program in 1993 that raised benefits significantly and offered aid to some of those without children. The program has enjoyed bipartisan support, because benefits are connected to work, and this mitigates the stigma that mars other poverty programs.[57]

OVERALL EFFECT OF THE WAR ON POVERTY

Many conservative critics continue to charge that the Great Society's War on Poverty produced nothing but dismal failure in the government's attempts to ameliorate poverty. In many ways this criticism has become part of conventional wisdom, despite the fact that the statement is flat wrong. As Michael Katz summarizes, "between 1964 and 1973 [just counting the years where the programs listed above were first implemented] the poverty rate plummeted from 19 percent to 11 percent, while the number of poor people declined by more

than 13 million." Obviously, government made a difference. And just as obviously, given the 2008 economic meltdown, galloping inequality, stagnant wages, and increasing poverty, the free market is not anywhere near as capable of providing economic stability and security for all Americans.[58]

The 1980s and 1990s

Lyndon Johnson's Great Society programs represented public acceptance of and even demand for greater national efforts in achieving income equality and extending economic opportunity for those left outside of America's growing affluence. The Reagan administration, however, operated from two fundamentally different assumptions: that the welfare state and other expansions of governmental activity were in many ways responsible for the economic downturn of the 1970s, and that government economic support undermined a recipient's work ethic and encouraged dependency. As a result, Reagan officials cut funding for food stamps, unemployment compensation, child nutrition, vocational education, the Job Corps, and AFDC. They also terminated the temporary public jobs-training program (developed under the 1973 Comprehensive Employment Training Act, or CETA). Congress ended up accepting only half of the cuts the Reagan administration recommended when it passed the 1981 Omnibus Budget Reconciliation Act (OBRA). Still, the cuts proved to be significant. OBRA:

- Removed $1.2 billion in federal and state funding for AFDC, ending benefits for approximately 408,000 working-poor families and cutting benefits for 300,000 more. Complex new rules were established that greatly restricted eligibility and benefits, forcing many of the working-poor AFDC recipients out of the program.
- Reduced benefits for nearly all food stamp recipients and "eliminated aid for more than a million people," with $2 billion cut from a $12 billion program. School lunch funding was cut by a third ($1 billion), affecting about 3 million children. Cuts were also made to the special milk program and the summer food program. The Reagan administration even proposed listing ketchup as a vegetable, to satisfy a requirement for school lunches.
- Cut funding for housing by a third in 1981, and then more deeply in 1982. Poor families were forced to pay more of their income in rent for public housing. The number of new families receiving housing assistance fell from 325,000 in 1979 to 89,000 in 1984. New subsidized low-income housing construction dropped by 80 percent from 1982 to 1986. Over this period, federal funds for subsidized housing were

slashed from $26.1 billion to $2.1 billion, virtually eliminating new construction for low-income housing units.
- Terminated the CETA temporary public jobs-training program, putting nearly 400,000 persons out of work at a time of high unemployment. CETA was replaced by a Job Training Partnership Act to provide training (but not jobs) for disadvantaged adults and youths, funded at about one-third the rate of CETA.
- Curtailed extended unemployment benefits, resulting in a severe retrenchment in the number of unemployed individuals receiving benefits. In 1975, 81% of the unemployed received benefits, but this was down to 26% in 1987, "the lowest rate since the program was first introduced in the 1930s."
- Cut Medicaid benefits (health care for the poor) and tightened eligibility. Over a million potential recipients were denied assistance.
- Cut Guaranteed Student Loans (GSL) and Pell Grants to low-income students. The number of Pell Grants declined by 100,000, while new loans under the GSL program declined by 460,000 between 1980/81 and 1982/83.
- Consolidated fifty-four categorical aid programs into nine social service block grants to the states. National aid to the states for public assistance and other programs was cut by 20 percent in 1981, and by 37% by the end of Reagan's first term.
- Ended benefits for nearly 500,000 persons after an aggressive review of disability claims. Many of these decisions were eventually reversed as advocates for the disabled took their case to the courts.[59]

Reagan's attack on public-sector relief and support programs, Piven and Cloward assert, initiated a "new class war" to force more Americans back into the labor pool in a strategy designed to lower wages and strengthen employers. After decades of watching the public sector buffer unemployment and underemployment, employers were now back in the driver's seat. They had been pressing for social spending cuts for years. Their business offensive found its spokesman in President Reagan, whose time in office took on the attributes of a crusade to reverse the governmental expansions that had, since the New Deal, protected Americans from economic insecurity. Scapegoating the poor took central stage in Reagan's rhetorical denunciations of welfare and the welfare state. In his world view, welfare caused poverty, and welfare recipients were themselves to blame for their condition. "Welfare"—in the sense of the social programs reserved for the poorest Americans and those least able to work—was the derogatory term used by Reagan to exemplify and demean the rest of the welfare state.

Reagan's 1981 State of the Union address blamed government for all the nation's ills and promoted free markets as the panacea for delivering a new prosperity for all. He used his 1982 address to take "aim at the plethora of programs created under the auspices of the New Deal and Great Society."[60] The Reagan administration even proposed deep cuts in—if not the outright elimination of—Social Security. Reagan exploited a temporary shortfall in the Social Security trust fund (a recession in the early 1980s pushed many into early retirement and thus reduced the amount collected in Social Security taxes) to propose a significant rollback of the program. Congress, however, unanimously passed a resolution opposing such actions, and Democrats proposed a bipartisan study of Social Security.

Reagan established a National Commission on Social Security Reform in December 1981. The Commission's recommendations, adopted by the Reagan administration and, with few changes, by Congress, raised the Social Security payroll tax (as corporate taxes dropped dramatically, this new tax, targeted specifically at the middle class, was one of the largest tax increases of the decade), reconfigured downward and delayed cost of living adjustments, and raised the age at which full retirement benefits could be obtained. The assault on Social Security and other social programs, combined with a worsening economy, produced a political backlash, with Republicans suffering significant congressional defeats in the 1982 midterm elections. In 1984, when presidential candidate Walter Mondale charged that Reagan sought to abolish Social Security, Reagan was forced to declare his allegiance to the program. The Reagan administration had learned their lesson and thereafter kept their main assault targeted on programs designed to serve America's poor or near-poor.[61]

By simultaneously pushing for greater local control over social spending and cutting budgets, the Reagan administration forced many states to balance their budgets on the backs of poor welfare recipients. States did so by restricting access to benefits and instituting punitive workfare programs that, ironically, cost significantly more than simply cutting an AFDC check for poor mothers and their children. (Administrative costs added about $3,000 per adult recipient, while day care expenses for working mothers added another $3,000.) Reagan's cuts in social spending, alongside a worsening economy, led to an alarming increase in the poverty rate. The number of people in poverty increased from 11 percent of the population in 1979 to more than 15 percent in 1983, the highest poverty rate since 1966/67. From 1979 to the mid-1980s, there was an increase of between 9 and 10 million more Americans who were in poverty—the majority of whom were in newly impoverished, working-class, white male–headed households.[62]

Ironically, as the impact of Reagan's attack on the welfare state was a factor in greatly increasing inequality and poverty, Reagan's rhetorical denunciations

of "welfare queens" driving Cadillacs and "strapping young bucks" using food stamps to buy T-bone steaks helped demonize the poor and delegitimize welfare programs more generally. Reagan emphasized the moral shortcomings of welfare recipients and, aided by a growing chorus of conservative critics, shifted attention from the structural reasons for poverty (such as too few jobs, an economic decline, deindustrialization, and the unemployability of certain sectors of the population) and made welfare itself the problem to be tackled and overcome. The goal of ending guaranteed government support for the poor was achieved under the Clinton administration, as a conservative group of Republicans gained control of their party and of Congress and made welfare itself a focus for their attacks.[63]

William J. Clinton

When Bill Clinton ran for president in 1992, he promised to "end welfare as we know it." Still, until the Republicans gained control of both houses of Congress in the 1994 elections, Clinton's plans for reforming welfare had consisted of proposals to increase spending on welfare benefits, although in a way designed to put recipients back to work. Clinton wanted the government to provide recipients with "social services, financial support, and, if necessary, public-sector jobs." He proposed new funding, estimated at $10 billion, for training and education to improve the employability of AFDC recipients. But, with Republicans suddenly in charge of the Congress after the 1994 midterm elections, Clinton famously declared that "the era of big government is over" and signed, in the midst of his reelection campaign, a very different welfare reform proposal, the 1996 Personal Responsibility and Work Opportunity Reconciliation Act.[64]

This version of welfare reform represented a great reversal: it ended the sixty-year-old entitlement program that had ensured some basic subsistence for the poorest American children and families. As Senator Daniel Patrick Moynihan (D-NY) declared before the bill passed: "This will be the first time in history that we have repealed a core provision of the Social Security Act. Further, we are choosing to repeal the provision for children." Afterward, he bitterly mused that the new law was "the most brutal act of social policy since Reconstruction." While, under AFDC, states had an *obligation* to assist those who were eligible under the law, they were no longer *required* to do so. And instead of increasing welfare spending by the $10 billion Clinton thought was necessary to fully implement the transition to a work-based program, the plan called for lumping many different welfare programs together into two block grants, through which $55 billion would be cut from existing spending over six years.[65]

The new program was called Temporary Assistance for Needy Families (TANF) to emphasize the temporary nature of any assistance received, since there was a five-year lifetime limit on the availability of benefits. States could set a shorter time limit, or they could simply end the program altogether if they so wished. There were also exceptions that allowed continued benefits for up to 20 percent of a state's caseload after the five-year time limit was reached. States were required to begin moving recipients into jobs. The law set specific targets for the percentages of recipients that needed to be involved in work programs, and many recipients had to agree to *any* job placement or lose their benefits (a particular hardship for mothers with small children, who, it is assumed, are not working when they are raising their children). Aside from these and a few other general guidelines, responsibility for caring for their poor lay with each state.

Under the new block grant system, states did not have to worry about national standards concerning spending and eligibility. They were under no national compulsion to provide for needy families beyond the five-year time limit, and even within that limit, they could reduce benefits and remove recipients as much as they wanted. There no longer was any guarantee that poor families could have access to cash assistance, and states could spend the money on in-kind assistance and services, or even administrative costs related to their assistance programs. In many cases, the money was completely unspent. For example, in 1998, more than half the states did not spend all the money available to them. As a result, states pursued widely divergent policies, with each state deciding who got benefits and how much they would receive. For example, in 2013, fewer than 10 percent of poor families received help in Texas, while California helped almost 75 percent.[66]

One central fear was that, under these new rules, many states would find it much easier to simply cut recipients off rather than spend the money to move them into jobs (which is an expensive proposition, entailing investments in education, health, and child care). As proponents celebrated a rapid decline in the number of welfare recipients under TANF, studies showed that only about 50 percent of former recipients gained employment, and even then, most earned less than poverty-level wages. The rest either were eliminated from the benefits rolls because they violated the new rules or were simply terminated by state officials, who were under political and financial pressures to reduce the rolls.

After six years, the impact of the changes was clear. Since TANF had gone into effect, the number of welfare recipients plummeted from 12.2 million in 1996 to 5 million in 2002 (a 59% decrease). Even as poverty increased from 31.6 million in 2000 to 34.6 million in 2002, the number on welfare continued to drop, from 5.8 million in 2000 to 5 million in 2002. The amount the national

government spent on TANF in 2014, $16.5 billion, has remained completely unchanged since 1997, which means that spending in real dollars has declined by 32 percent, despite the economic collapse in 2008. It is not surprising, then, that TANF caseloads have fallen from 4.7 million families in 1996 to 1.6 million families in 2014, or that the number of families with children in poverty has increased by almost 2 million since 2000. When Congress enacted TANF in 1996, 69 out of 100 families in poverty received assistance; by 2014, it was only 25 out of every 100. Not surprisingly, as TANF caseloads shrink, poverty in America had expanded (from 11% in 2000 to 15% in 2014, with child poverty increasing from 16% to 22% over the same period), with the largest burdens falling on children, the program's main target.[67]

Ironies abound in the ending of "welfare as we knew it." The simplest irony is that the United States, the richest nation in the world, has removed some basic, minimal support for its most vulnerable population. Assistance to the most dependent Americans has become heavily stigmatized, with the American welfare state encompassing activities in which aid to the poor represents only a small portion (less than one-sixth) of its total welfare state expenditures. Aid to Families with Dependent Children, the program that primarily served mothers and children, cost $22 billion in 1995, the last year it was in operation. By comparison, workers' compensation that year cost $43 billion, Medicare cost $180 billion, and Social Security cost $336 billion. While middle-class and even rich retirees receive the lion's share of benefits through programs like Social Security and Medicare, a significant percentage of the poor, although they are entitled to benefits, receive no assistance. Only about a quarter of single people and the elderly poor, along with a quarter of married-couple families and a bare majority of single-mother families, received cash assistance in 1996, with far fewer poor families receiving support in subsequent years.[68]

Barack Obama and Health Care Reform

The watershed 2008 election was a resounding victory for the Democratic Party, with Barack Obama winning the presidency and the Democrats holding a majority in both houses of Congress. For Obama, following through on his campaign promises about expanding and extending health care coverage would not be easy, despite the 38 million Americans with no such coverage and the 70–80 percent of Americans who insisted that the health care system be fundamentally reformed. Obama first had to confront the dramatic economic collapse in 2008, which involved a federal government bailout of Wall Street and the auto industry. Government social spending through the welfare state—encompassing unemployment benefits, retirement benefits, disability payments,

and welfare and social services payments—did its part by providing an income floor for many of those devastated by the economic meltdown.

Moreover, Obama faced unprecedented, unified Republican opposition for each and every proposal he made. This was never more true than for health care, which potentially disrupted business as usual for a powerful array of interest groups, including employers, doctors, hospitals, insurance companies, and pharmaceutical firms. Many presidents had tried and failed to pass a bill that would cover as many Americans as possible, and Obama finally pushed a bill through Congress that would come closest to realizing that goal. After twice passing muster with the US Supreme Court, and after a rough rollout, Obamacare had reduced the percentage of the uninsured by 25 percent, to between 8 and 11 million Americans. By mid-2015, another million or so Americans had signed up for this health care program, dramatically reducing the number of Americans without health insurance. Yet millions still remain without coverage, and every single Republican candidate for president in 2016 vowed to eliminate Obamacare.[69]

Conclusion

This posture of antagonism to a basic right to health insurance is indicative of a wholesale movement afoot to reduce and eliminate welfare state programs. The ideology of neoliberalism, embraced by every Republican candidate for office, and even by many Democrats, preaches hostility to most government programs, especially those relating to the welfare state. Beginning with Republican president Reagan's failed push to eliminate Social Security, and culminating with Democratic president Bill Clinton's successful push to "end welfare," the welfare state has been vilified and attacked by those adhering to the simplistic mantra: government is a failure, and welfare state programs do nothing more than coddle laziness and undermine a work ethic among many Americans, who would rather sit back and collect a government check than work for a wage. The welfare state is controversial, in part because it insulates Americans from having to submit completely to the rigors of a free market that is ill-equipped to provide basic security for all Americans. It is also controversial in that it provides one of the few props for working people in their ongoing struggles with employers.

The welfare state emerged to deal with economic failures, as well as economic change and insecurity. Welfare state programs developed as a response to both human needs and popular demands that were transmitted through our electoral system. These programs are popular and successful, and they played a huge role in stabilizing the nation and the economy after the economic

meltdown of 2008. Still, there is a powerful movement, funded and driven by a wealthy cadre of individuals and corporations, as well as their allied think tanks, that continue to seek a rollback of the programs inherited from both the Great Society and the New Deal. What Piven and Cloward, decades ago, referred to as "the new class war" continues unabated today. Where Polanyi, in 1957, viewed the welfare state as one of the main reactions against the amorality of the market's insistence on treating human beings as mere commodities—in other words, as simple inputs into the industrial machine—what we are witnessing today is an attempt to remove any and all restrictions against this commodification. Neoliberalism and its adherents insist that markets must rule, and that we should simply be valued as the marketplace would value us. We are, in this regard, nothing more than the wages we can garner in the marketplace. Yet, as a combination of economic malfunction, rapid economic change, and the transformation of America into a low-wage nation becomes the central reality of most Americans' lives, the welfare state continues to provide basic stability for a growing number of us.

Notes

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3. Polanyi, *The Great Transformation*, 132.

4. Frances Fox Piven and Richard Cloward, *Regulating the Poor: The Functions of Public Welfare*, updated ed. (New York: Vintage, 1993), xv.

5. Jacob S. Hacker, *The Divided Welfare State* (New York: Cambridge University Press, 2002), 6–7, 24, 35–37, 44, 154.

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10. Ibid., quote at 3, see also 63–69, 167–73, 176.

11. Eduardo Porter, "Electing to Ignore the Poorest of the Poor," *New York Times*, November 18, 2015; Michael B. Katz, *The Price of Citizenship: Redefining the American Welfare State* (New York: Henry Holt, 2001), 1, 11; Katz, *In the*

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17. Ibid., 236–43; Edward Berkowitz, *America's Welfare State: From Roosevelt to Reagan* (Baltimore: Johns Hopkins University Press, 1991), 16–21; Blanche D. Coll, *Safety Net: Welfare and Social Security, 1929–1979* (New Brunswick, NJ: Rutgers University Press, 1995), 34–40.

18. Berkowitz, *America's Welfare State*, 48; Bernstein, *Caring Society*, 289; Coll, *Safety Net*, 94.

19. Piven and Cloward, *Regulating the Poor*, 114; Berkowitz, *America's Welfare State*, 28–37; Bernstein, *Caring Society*, 176–80.

20. Amenta, *Bold Relief*, 86–88, 145; Coll, *Safety Net*, 52.

21. Piven and Cloward, *Regulating the Poor*, 115; Amenta, *Bold Relief*, 88, 145; Coll, *Safety Net*, 104–8.

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48. Katz, *In the Shadow*, 266; Katz, *Price of Citizenship*, 298–304; Robertson and Judd, *American Public Policy*, 224; Brown, *Race, Money*, 255.

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The National Security State

It is difficult for americans to recognize the exceptional nature of our national security state. After World War II, the US national security state grew to immense proportions and came to dominate national governance. Although few Americans now consider the enormous military presence in our nation as extraordinary or alarming, our forebears would have found much to fear. Compared with other nations and with our own pre–World War II period, there is much to be amazed and concerned about, especially in a democracy where we are taught to fear secrecy and unquestioned power. Americans are hardly aware of the extent and expanse of the US military and related organizations, and this chapter is designed to introduce the reader to how and why we find ourselves with such a large military establishment.

The United States now has a huge, permanently mobilized army that, in peacetime, is almost ten times larger than it was on the eve of World War II. This army is supported by a budget that, by itself, is bigger than that of most governments. There are 969 military installations in fifty states (even after a round of base cuts in the 1990s), and a total of 725 US military bases, with a value of $118 billion, ring the globe. Most of these bases come complete with nightclubs, gyms, swimming pools, and shopping malls, creating insulated environments for the 531,227 military personnel, civilian support staff, and dependents housed there. (This doesn't include what could be hundreds of secret, smaller installations scattered throughout the world.) The military operates 234 golf courses, a ski and vacation center in the Bavarian Alps, and a resort hotel in Tokyo.[1]

The national security state is built on one of the most basic foundations and functions of any country: that of monopolizing the legitimate exercise of violence within a specific geographic area (the only force that can legitimately deprive you of your liberty in any nation is a duly constituted government), and protecting the physical integrity of that nation against external threats. Historians generally agree with Charles Tilly's famous formulation that "war made the state." Successful war-making capacity required the development of systems of taxation and conscription, complex bureaucracies, and professional armies, fiscal and bureaucratic developments that form the basis for strong modern states. At the same time, all other functions and responsibilities of a political

nature depend on the security, order, and stability sustained by military and police forces. The United States is no different from any other country in this regard, and it was during wars that the US federal government experienced its greatest growth in fiscal and bureaucratic capabilities. This was especially so during World War II.[2]

Until the eve of that war, America's military institutions and officials exercised relatively little influence in the corridors of national power. The United States had always maintained a strong and definite set of military institutions, but these did not define the central character of the nation, as they later did during and after World War II. US military institutions were certainly not insubstantial, especially during the Civil War and World War I. But they were only as strong as they needed to be to carry out the responsibilities of protecting the nation, keeping the peace domestically, forcefully displacing Native Americans from lands desired by westward-pushing settlers and prospectors, and projecting US power regionally and internationally as the need arose. Military institutions would be expanded during emergencies, but, for the most part, these institutions settled back into a peacetime routine, size, and cost afterward. Not so with the emergency of World War II. That war heralded a new role for the military, as they shouldered extensive new responsibilities and enjoyed unprecedented levels of public acclaim.

The military's domestic wartime ascendancy would be institutionalized after the war with the creation of the national security state. As one scholar relates, after World War II, the military services "emerged as the supreme embodiment of national purpose." The New Deal had increased the power and authority of the national government, but World War II and the Cold War would be the real watersheds in terms of expanding the federal government's power. The number of civilian employees in the national government reached 936,000 by 1939 (up from 239,476 in 1901), but by the end of World War II, it stood at 3.8 million (with 2.6 million working in the military departments), the highest number ever employed by the federal government. The total would settle at 1.93 million by 1950, but this was still almost twice the prewar number.[3]

The war wrenched the United States from its slumbering isolationism, and the permanent emergency caused by the Cold War against the Soviet Union led to the creation of something new in the American experience: an enormous peacetime military establishment. This establishment, containing what many refer to as the military-industrial complex, linked government and the private sector in innumerable ways, with the military services developing a tight web of relations with a core group of industrial corporations, congressional committees, associated national agencies, and top-ranked universities. Modern warfare required massive arms production, which only big business could handle. And the era of atomic and then nuclear warheads, delivered by ever more

sophisticated missiles, bombers, and submarines, required coordinated research by a cadre of top scientists working within these companies, as well as within the federal government and major universities. One indicator alone—that of expenditures—provides a glaring reminder of the incredible postwar clout of the Pentagon: narrow national security spending* for the period from 1946 to 2002, before the wars in Afghanistan and Iraq that cost over $4 trillion, totaled over $8 trillion. That amounts to over $26 trillion—$26,000,000,000,000.00—in inflation-adjusted 2015 dollars. (For some perspective, a million seconds equals 11.5 days, a billion seconds is about 32 years, while a trillion seconds equals 31,688 years.)[4]

As Seymour Melman noted in 1974, "In every year [since] 1951 . . . the Defense Department budget has exceeded the combined net profits of all American corporations." In 1983, for instance, the combined net income for all Fortune 500 firms was $68.7 billion, while the military budget was $265.3 billion. The Pentagon has more employees than the rest of the government put together, is responsible for over two-thirds of all government purchases, sponsors over 50 percent of all governmental research and development (over 71% of federal research money during the 1980s went to the military), and runs the largest educational enterprise in the world. The Department of Defense's own website proclaims, "We are America's oldest company, largest company, busiest company, [and] most successful company."[5]

For most of the period after World War II, Democrats and Republicans alike supported an aggressively militaristic foreign policy, along with a growing defense budget. The growth and workings of the national security state, however, generated their share of critics, who drew attention to how national security imperatives demanded secrecy, driving leaders to manipulate fears of foreign threats and repress dissenters in ways that compromised civil liberties and the openness of democratic government. Critics also noted how the permanent wartime atmosphere skewed and distorted national bureaucratic and policy development, federal spending priorities, academic research agendas, and patterns of foreign aid. It also had the effect of militarizing US foreign policy. Critics worried that for national security managers, the Cold War meant a redirection of much of the nation's resources to military purposes and the end of the traditional distinctions between war and peace, as well as between military and civilian goals.

President Eisenhower (a former five-star general, who had been in charge of the Allied effort to defeat Nazi Germany) provided one of the most alarm-

* The term *narrow* is used because it does not include interest on the national debt (most of which is due to military spending), nor does it include spending on foreign policy, intelligence, space, or energy programs related to the national security state.

ing criticisms in his 1960 farewell address. In a speech that coined the term *military-industrial complex*, Eisenhower's warnings are stark:

> Unjustified military spending is nothing more than a distorted use of the nation's resources. . . . [The] conjunction of an immense military establishment and a large arms industry is new in the American experience. The total influence—economic, political, even spiritual—is felt in every city, every state house, every office of the federal government. . . . Our toil, resources, and livelihood are all involved; so is the very structure of our society. . . . The potential for the disastrous rise of misplaced power exists and will persist."

Eisenhower was, for the most part, simply ignored.[6]

Anticommunism, which provided the impetus behind the development and maintenance of a national security state, became the key focus for national policy makers, beginning with President Truman's March 1947 speech, asking Congress for a large postwar aid package to Greece. Truman faced the exacting task of securing a huge appropriation for foreign aid from a Republican Congress that, despite its members' anticommunist rhetoric, remained committed to fiscal conservatism, economic nationalism, and political isolationism. Congressional leaders were willing to support an expensive new international commitment, but only on the condition that Truman, as Republican senator Arthur Vandenberg memorably instructed, "make a speech and scare the hell out of the country." Truman obliged. His crusading speech portrayed aid to Greece and neighboring Turkey as part of a greater struggle to confront the new Soviet enemy and thus protect the national security of the United States. The blockbuster Truman Doctrine announced in the speech called for the United States to resist internal and external aggression against any nation of "free peoples" anywhere, a truly open-ended commitment that called for the United States to police the entire globe to keep the communist enemy at bay. With this pronouncement, there was little the public or Congress could do but to follow their president's lead. With this powerful beginning, for over forty years anticommunism would provide a sense of permanent national emergency and the justification for the single largest commitment of postwar governmental institutional and financial energies.[7]

The 1947 National Security Act

Truman's efforts in 1947 to reconstitute American attitudes toward the Soviet Union and international relations gave new impetus to ongoing efforts to remake the federal government in terms of national security concerns. With Truman's anticommunist rhetoric triumphing over public and congressional

isolationist leanings, a forceful effort by both military and civilian leaders led to final passage of the 1947 National Security Act. This act unified the army, navy, and a newly independent air force into a Department of Defense and created powerful new institutions, such as the National Security Council and the Central Intelligence Agency, institutions that continue to center the national security state and remain "among the best known and most powerful organs of government."[8]

The end of World War II had brought a reassessment of America's military structure. The US Army and US Navy had undergone wartime reorganizations that had served, in effect, as short-term solutions to longer-term problems. Wartime necessities, particularly the need to construct a united front in order to cooperate adequately with the British military, had led the US military chiefs to organize themselves temporarily under a Joint Chiefs of Staff. The war had also led to the emergence of a more independent and forceful US Army Air Force (formally part of the army before and during the war). The war exposed serious deficiencies in the organization of the country's military services, and it became clear that this would need a serious overhaul once the war ended.

The process of modernizing US military institutions involved many types of disputes. It was accomplished only after almost two years of bitter and hostile feuds between the army, navy, and air force. Disputes involved how the responsibilities and missions for future wars would be divided among the services, and how far unification would go—especially about whether there would be a single secretary of defense representing the three services, and the extent of the new secretary's power and authority. On top of these issues there were others, such as concern for the president's responsibilities within any new setup, and very definite fears about the extent to which permanent military preparedness would undermine America's democratic traditions by concentrating power within an unelected military apparatus and a national security elite.[9]

Secretary of the Navy (and former Wall Street luminary) James Forrestal, a key participant in framing the resulting law, successfully promoted a broad reorganization that would establish an entirely new organizational center for the US national government. As he emphasized in September 1946, "Unification is *not* merely a matter of Army and Navy and Air Forces—it is the whole complex of our national, economic, military, and political power." US national security, according to this view, required a complete rebuilding of the country's federal administration to support the new international posture and mission of the United States. Forrestal's recommendations were introduced to Congress and the public with the following words: "Our present situation calls for action far more drastic and far-reaching than unification of the military services. It calls for a complete realignment of our governmental organization to serve our national security in the light of our new world power and

position, our new international commitments, and the epochal new scientific discoveries." Forrestal believed that the nation's security required that military policy be coordinated and integrated with intelligence, scientific, economic, and foreign and diplomatic policies to sustain US international hegemony.[10]

The National Security Act, as passed in 1947, emphasized these broader aspects of unification, specifically calling for close and constant integration of domestic, military, and foreign policies at the highest levels of the national state. The act replaced the War and Navy Departments with a National Military Establishment (NME) that would eventually become the Department of Defense in 1949. This NME contained the three military services—with the air force gaining equal status with the army and navy—as cabinet-level departments. Also contained within the NME were the agencies created to coordinate these departments, under the loose direction of the secretary of defense. Real integration and unification of the three services was deferred because of navy opposition, and the act defined service roles and missions in such a way as to protect naval aviation and navy control of the US Marine Corps.

Because the army, navy, and air force each feared that it would be overshadowed by one or another of the other two military services, roles and missions for each were defined so broadly that each could claim full responsibility for winning future wars. Moreover, the interservice jealousies unleashed by the unification battles—which continue to this day—translated into fear of a strong secretary of defense and any centralized control over the services themselves. Thus the Office of the Secretary of Defense would be largely ceremonial. The secretary of defense had little or no staff, no control over the three services' budgets, and would enjoy only "general direction" authority over the military services. Individual service secretaries retained day-to-day control of their departments and kept a direct channel to the president, independent of the secretary of defense. Truman rewarded Navy Secretary Forrestal, who led the charge against a strong secretary of defense, with the job.[11]

The coordinating agencies within the NME would include a War Council, to coordinate military activities between the services, and the Joint Chiefs of Staff (originally created during World War II), assisted by a Joint Staff, to serve as the principal professional military advisors to the president. The joint chiefs thereby gained a role and status similar to those of the secretary of defense. The act provided for a Research and Development Board to help merge scientific research and military demands, a Munitions Board to help organize and integrate the material needs of the three services, and a National Security Resources Board (NSRB) to advise the president about the overall integration of military, industrial, and civilian mobilization.[12]

Over and above the NME, the National Security Act provided for a National Security Council (NSC), with advisory authority to integrate "domestic,

foreign, and military policies relating to the national security." The NSC today usually consists of the president, vice president, secretaries of state and defense, chairman of the Joint Chiefs of Staff, director of the Central Intelligence Agency, and the president's national security advisor. The NSC was specifically empowered to "assess and appraise the objectives, commitments, and risks of the United States in relation to our actual and potential military power" and "to consider policies on matters of common interest to the Department of State, the National Military Establishment, and the National Security Resources Board." The act also established the Central Intelligence Agency under the National Security Council. The CIA was to provide the NSC with timely and adequate intelligence regarding the political intentions and military capabilities of other nations.

The CIA had its origins in the Office of Strategic Services (OSS), created during World War II. President Truman had abolished the OSS at the end of the war, amid complaints that the OSS trespassed on the turf of existing intelligence agencies, including the Department of State, the military services, and J. Edgar Hoover's Federal Bureau of Investigation (FBI). Yet the need for an agency to coordinate these various intelligence activities remained, so provision for the CIA was included within the 1947 National Security Act. Hoover pressed to restrict the CIA to foreign intelligence gathering only, leaving the FBI as the key agency for domestic intelligence, though, as we know now, the CIA violated this prohibition repeatedly by monitoring domestic political groups suspected of having ties to foreign governments. While originally empowered under a loosely defined grant of authority to coordinate, evaluate, and disseminate intelligence affecting national security, within two years the CIA assumed new functions. It began developing its own intelligence-gathering capabilities and engaging in covert operations to disrupt, undermine, and even overthrow foreign governments.[13]

The growing national security state also included the Atomic Energy Commission (AEC), previously established under the 1946 Atomic Energy Act. The AEC gained full control over materials, facilities, production, research, and information relating to atomic/nuclear fission from the War Department. Despite civilian leadership of the AEC—hotly contested by the military services and their congressional allies, who wanted military stewardship over the AEC—military considerations in research and development were deemed to be paramount, because of increasing tensions with the Soviet Union and fears about future threats from atomic-equipped adversaries. The AEC was empowered to promote an adequate stockpile of atomic bombs for defensive and offensive purposes and to research new processes in nuclear fission.[14]

With the National Security Act, the United States institutionalized a permanent shift in federal governmental power. National security concerns became

the centerpiece of the growing national administration. As Michael Sherry discerns, with this central reorganization of the federal government, "national security assumed a permanent and paramount importance" in the United States and "militarization reshaped every realm of American life—politics and foreign policy, economic and technology, culture and social relations—making America a profoundly different nation." In 1956, C. Wright Mills worried over the fact that military officials were "now more powerful than they have ever been in the history of the American elite." And in 1960, E. E. Schattschneider noted that "the changes in the [US government] could hardly have been greater if we had had a violent revolution." These fundamental changes did not require a violent revolution. Instead, the revolution was a quiet one, instigated and organized by a new coalition of now-influential military officials, in cooperation with those international bankers and corporate men who had ascended to the top levels of national power during World War II.[15]

One measure of this momentous shift can be seen in the continued high military and military-related expenditures in the late 1940s. The peacetime budget of 1947 provided for ten times the amount spent on national defense before the war, while 80 percent of the entire 1948 national budget was for defense, international affairs, interest on the national debt (accumulated during World War II), and veterans benefits. These categories swallowed $29 billion, while the nation spent only $2.2 billion on social welfare, health, education, and housing policies. And this was before increased tensions between the United States and the Soviet Union gave the military services enhanced leverage in Congress to demand more money.[16]

President Truman struggled to hold the line against pressures for new increases in military spending after the immediate postwar demobilization. But, finding it useful to ratchet up anticommunist tensions in 1947 and 1948 to obtain passage of his controversial international aid programs (aid to Greece, and the Marshall Plan's economic aid to rebuild a war-torn Europe), Truman discovered that he had opened a Pandora's box of military pressures for increased funding. Part of the reason for the military pressures lay in continuing interservice squabbles over missions and responsibilities that saw each service demanding the right to win future wars all on its own. Now that the military-spending pie had to be divided three ways, these pressures, in the context of limited budgets, grew more intense. The navy wanted to dominate postwar defense with a new supercarrier that could support atom bomb–equipped planes and a fleet that was "five times larger than the combined navies of all the other powers." The air force, meanwhile, continued to argue that its long-range bombers, combined with its air supremacy and atomic weaponry, meant that the other services were redundant, and that its branch of the armed

services was more cost effective than a navy with expensive new equipment and a manpower-heavy army.[17]

The 1949 National Security Act Amendments and NSC-68

Despite the hopes that the National Security Act would restrain and check interservice rivalries, the military services continued their squabbling over budgets and missions. The secretary of defense proved to be too weak to do much about it. The services failed to develop a coherent strategic plan to divide up war-making responsibilities among themselves, so the duplication of functions and associated waste of resources continued. These problems led to the 1949 amendments to the National Security Act, which transformed the National Military Establishment, created two years before, into the Department of Defense (DOD).

The military services all lost their executive-department and cabinet-level status, instead becoming military departments headed by individual secretaries under the "direction, authority, and control" of the secretary of defense. A new position, the chairman of the Joint Chiefs of Staff, superior in command to the other chiefs and operating as an assistant to the secretary of defense, was also created. The act dropped the three service secretaries from the National Security Council. Since they now had lost their direct channel to the president, they would have to appeal their budgets and other issues through the secretary of defense. Nonetheless, duplication and waste continued, as the navy and the air force—both helped by a large contingent of congressional supporters—each retained its own independent, substantial air fleet, sustained by a separate procurement, design, and manufacturing process. The three branches would prove to be very aggressive through the years in successfully demanding maximum funding, regardless of the duplication involved, with each wanting to have the capability of winning any future conflict all on its own. The various secretaries of defense, despite some serious efforts by a few noted individuals, were never able to rein in the separate military departments, who continued to behave over the decades like spoiled children, demanding ever more complex, prohibitively expensive, and often unnecessary armaments. As retired colonel and noted scholar Andrew Bacevich concludes in a 2016 piece entitled "Who Runs the Pentagon?": "The defense secretary may be more than a figurehead, but he is not the boss. There is no boss." The DOD thus has remained a relatively rudderless, lumbering leviathan, whose bureaucratic momentum and sacred cow status has it vacuuming up funds that would dwarf those of most governments.[18]

With the institutional and manpower aspects of national security in place through the passage of the 1947 act, the goals of national security policy came into question. By the end of 1948, this policy settled on containing the Soviet threat to Europe by reliance on bomber-based atomic weapons in England and Germany, the establishment of the North Atlantic Treaty Organization, and increased military aid to our European allies. The 1949 revolution in China, led by Chinese communist Mao Zedong, combined with the Soviet Union's explosion of its own atomic bomb, produced a new spasm of domestic anticommunist sentiment. These events and this mindset, alongside a serious economic recession at home and abroad, led Truman to order a reappraisal of national security policy and consider additional military expenditures at home, as well as new military aid to Europe as a replacement for the projected end to the Marshall Plan's economic aid. The reappraisal, contained in National Security Council policy paper NSC-68, was finished in 1950 and promoted a dramatic shift in national security policy, highlighted by calls for a large new dose of military spending.

NSC-68, referred to as "the bible of American national security policy," extrapolated from the Soviet dominance of Eastern Europe and the communist revolution in China to conclude that the communists were bent on world domination. The report portrayed the United States and the Soviet Union as involved in a death struggle of diametrically opposed economic and political orders. To meet this enemy, it advocated the direct militarization of US foreign policy, a tripling of military spending, and increased intervention into Third World areas (Africa, Asia, and Latin America) being vacated by European powers, to preclude Soviet adventurism. The document argued that the United States was now involved in "total war," a "permanent struggle" that erased the old distinction between war and peace. Given such a state of perpetual conflict, there could be no limitations on national security initiatives, and the document, working from the premise that US military strength had become "dangerously inadequate," called for more nuclear weapons, more conventional forces, more military and economic aid to our allies, and new programs of civil defense and psychological warfare.[19]

NSC-68 was used by hard-liners within the national security state to convince President Truman that military spending should be increased dramatically, at a point when he was trying to hold the line against such increases. The document, alongside the troubling developments of Chinese communism and Soviet atom bombs, did its work. Truman tentatively approved the new strategy in April 1950. Questions and doubts about both the need for such a huge increase in spending and the simplistic and alarmist portrayal of the Soviet leadership lingered, however. But as Truman's advisors wondered how to convince

the American public and Congress to support dramatic increases in military spending, North Korea invaded South Korea. Little more was needed.

With the Korean War, the United States entered fully into the heyday of the national security state. Truman and his advisors increased military aid and the presence of US military forces in Europe and in Japan. They pushed for German rearmament, and they launched the military buildup called for in NSC-68, raising military spending from Truman's original $13.9 billion for fiscal year (FY) 1951 nearly fourfold, to $42.9 billion. This buildup exceeded the one at the beginning of US involvement in World War II. Military spending would only level off in FY 1954, and it then would hold steady at relatively high levels, establishing a Cold War baseline of military spending that averaged $281 billion per year (in 2002 dollars) from 1950 through the 1990s. In FY 1950, the military budget accounted for less than one-third of national expenditures and less than 5 percent of GNP, but by FY 1953, it encompassed more than 60 percent of national outlays and more than 12 percent of GNP. Throughout the 1950s and afterward, military and military-related personnel represented between 60 and 70 percent of all federal government personnel. Employment numbers for the national government had more than quadrupled from 1932 to 1952—reaching 2.6 million civilians (and another 3.6 million in uniform), of whom 1.3 million worked for the Department of Defense, and thousands more in military-related agencies.[20]

Besides the enormous expansions in military spending, there were other important consequences of NSC-68 and the Korean War. Ernest R. May, providing one summary of these consequences, observes a great increase in the stature, authority, and budgets of the national intelligence community, including not only the CIA, but also those intelligence agencies directly managed by the military establishment, such as the National Security Agency and the National Reconnaissance Office. In addition, foreign affairs and diplomatic matters, nominally under the authority of the civilian Department of State, became increasingly militarized as that department became weakened and sidelined during and after World War II. Foreign affairs became redefined as postwar domestic militarization meant that quiet diplomacy often gave way to saber rattling and threats of military force. The White House itself was remade to emphasize military-political issues, as the National Security Council became the federal government's "main steering mechanism" and the center of most presidential decision making.[21]

In budgetary and institutional terms, May concludes, "the main business of the US government had become the development, maintenance, positioning, exploitation, and regulation of military forces." As Michael Hogan puts it, "National security concerns became the common currency of most policy makers, the arbiter of most values, [and] the key to America's new identity."

Any debate about these significant changes to the character of the US national government was stymied and quashed as Senator Joe McCarthy (R-WI) and others maintained a continuing drumbeat of anticommunism. It was difficult, to say the least, to raise objections to the militarization of the US government in such an environment. Democrats, especially, were held hostage for the next thirty years by charges of being soft on communism, forcing them to take hard-line policy positions on everything from military spending to the Vietnam War.[22]

Dwight Eisenhower and the "New Look"

Eisenhower came into office promising a "new look" at national security policies, with an eye to reducing military spending. His new look emphasized nuclear weapons, especially a "massive retaliation" bombardment of Soviet industrial and population centers that would, in theory, allow the reduction of conventional military forces. Eisenhower's preference to rely on nuclear superiority and threats of massive nuclear retaliation to any Soviet invasion of Western Europe was ostensibly cheaper (a goal of conservatives for years) than the maintenance of large numbers of ground troops (though troop levels in Europe continued to remain high). Military spending per se declined by 20 percent between FY 1953 and 1955 (and also declined as a proportion of the national budget), but it still totaled about 70 percent of the budget if payment for past wars was included.[23]

Besides reducing military spending, Eisenhower's new look also deemphasized drawn-out bloody conflicts, like the Korean War, in favor of covert actions. The emphasis on covert action increased the importance of the CIA over that of even the Department of State (the nation's traditional source of policy making in foreign affairs). By the end of the 1950s, the CIA became a central agency in the formulation and execution of American foreign policy. During Eisenhower's presidency, CIA officials developed new capabilities in propaganda and psychological warfare. They channeled money to noncommunist political groups in Western Europe, developed a network of agents that infiltrated foreign nations, and increased their analytical capabilities for producing intelligence (including the development of the U-2 spy plane, capable of photographing any part of the Soviet Union). Most dramatically, the CIA helped overthrow democratically elected governments in Iran and Guatemala (although later attempts to overthrow Indonesian president Sukarno and Cuban president Castro were unsuccessful).[24]

In another part of his new look, Eisenhower emphasized that science and technology be put to maximum use in the nation's defense. To enjoy savings on the deployment of conventional forces, Eisenhower looked to new developments

in military technology to produce a less costly military defense and more bang for the buck. In addition, the turn toward developing ever more complicated technologies was a response to domestic repugnance to a large standing army and huge numbers of wartime casualties. New technologies were meant to be labor saving and capital intensive. Instead of the traditional dependence on substantial numbers of soldiers on the ground—and the resultant casualties—reliance was instead placed on sophisticated and expensive (capital-intensive) air-power technologies. These technologies allowed warfare to be waged at a distance, reducing the need for ground troops and producing fewer casualties.

Despite hopes for a less costly defense system, investments in the science and technology of warfare increased enormously as the military services began to compete with each other in an increasingly costly interservice arms race. The various branches of the armed forces contracted for a multitude of new projects that exploited new electronics, missile, and nuclear technologies. As they did so, each breakthrough spurred further innovations, as well as new forms of interservice and contractor competitions. One weapons system competed against another in a spiraling arms race among the services. The military became carried away by increasingly exotic weaponry that included six different types of intermediate and intercontinental ballistic missiles (IRBMs and ICBMs) and new surface-to-air and surface-to-surface guided missiles and rockets. From this point forward, the nation's armed forces pursued any feasible and even conceivable new technological development as a matter of course.

Interservice competition fueled an internal arms race that was also driven by military planners, who assumed that every new American technological development would be quickly attained by the Soviets. Planners therefore demanded that every new piece of technology be quickly superseded by even newer technological developments, despite intelligence information showing that the Soviets were lagging far behind. The military services never worried about justifying these expensive new technological marvels until after they were developed. If something could be produced, its very existence justified the cost and effort involved. Missile procurement had represented a small portion of military spending in the early 1950s, but by 1958 it constituted 49 percent of the army's budget. The army's early focus on developing ballistic missiles as a component of battlefield weaponry was a way of keeping up with the increasing percentage of funds that went to the air force for their atomic/nuclear bombing capabilities. The "missile mess" of the 1950s took place beside an exuberance for other types of weaponry, including the production of "twenty-three kinds of combat aircraft, seventeen makes of helicopters, and twenty-one types of anti-submarine aircraft."[25]

Three events reinforced Eisenhower's emphasis on atomic/nuclear air power and spurred the nation's escalating dependence on the new technologies of war. First, the Soviets' explosion of an atomic device in 1949 led the United States to pursue the development of a thermonuclear bomb that was hundreds of times more destructive than the earlier atomic weapons. In addition, these new, more destructive weapons were far cheaper to make, again providing more bang for the buck and allowing the production of tens of thousands of warheads. This, in turn, spurred a demand for new types of delivery vehicles for these weapons (bombers, land-based missiles that required hardened silos, and sea-based missiles that required submarine warships). Second, in 1955, air force partisans proclaimed a "bomber gap" between the United States and the Soviet Union. This increased public anxieties about a new fleet of Soviet bombers that ostensibly could reach the United States. (The feared Soviet bombers were never built.) Third, in 1957 the most dramatic event occurred, when the Soviets beat the United States in launching the first satellite (Sputnik) into orbit, highlighting questions about the supposed US lead in technological developments and concerns about the nation's security. Ominous and dire warnings from military, political, and scientific leaders set the stage for a huge new investment in aerospace technologies and a new race between the services: between the army and the air force over intermediate-range ballistic missiles, and between the navy and the air force over intercontinental ballistic missiles.[26]

Eisenhower knew that the so-called bomber gap and Sputnik masked serious weaknesses in Soviet power, especially when compared with US nuclear superiority. But he acceded to spending increases in the weapons and space programs, along with the creation of new institutions, including the National Aeronautics and Space Administration (NASA) and a President's Science Advisory Committee. Congress also created the Defense Advanced Research Projects Agency (DARPA). Its mission would be to ensure that the United States retained a technological lead in military capabilities. Sputnik also gave new impetus to civil defense efforts (dubiously designed to protect Americans in the event of a nuclear attack). In addition, Sputnik led to a reorganization of the Department of Defense. This 1958 reorganization increased the power and staff resources of the secretary of defense and centralized control over the development of new weapons systems, the latter as a response to the hyper interservice competition over new missiles. It also allowed military chiefs to continue having direct access to Congress.[27]

These Eisenhower-era institutional developments and monetary investments provide a startling contrast to the limited improvements in social programs during the 1950s. The only real substantial investments in social programs during this period proceeded as an adjunct to the national security state. The national

government invested in housing and educational initiatives through the 1952 Veterans Adjustment Act, an addition to the GI Bill. Huge investments in the nation's highways proceeded under the 1956 National Defense Highway Act. The resulting interstate highway system, linking the entire continental United States by a huge crisscrossing network of highways (over 41,000 miles worth!), was justified by the need to evacuate cities in the event of nuclear war and rush military forces around the country in the event of a Soviet invasion. The panic over Sputnik spurred passage of the 1958 National Defense Education Act, which provided $1 billion over four years to strengthen education in science, mathematics, and modern foreign languages, including loans and grants for millions of undergraduates and graduate students. (The act was amended in 1964 and continued this educational support.) National security supplied the justification for domestic investments that normally would not have passed muster in Congress.[28]

The Military-Industrial Complex

The huge investments in the military services—alongside the new entrenched relations among military contractors, the three branches of the armed forces, major research universities, and the many members of Congress with districts dependent on military expenditures—led President Eisenhower to warn the nation about a "military-industrial complex" in his 1961 farewell address. Strictly speaking, the term *military-industrial complex* points to an alliance between the corporate leaders of the defense industry and the civilian and military leaders in the Department of Defense, although we can also include the Atomic Energy Commission and NASA. These two sets of private and public actors shared a desire to build and maintain an increasingly larger arsenal of high-technology weaponry, which provided DOD officials with ever-growing missions and budgets, and military contractors with a stable source of profits. Major research universities also participated in this military-industrial complex, as they received large grants for research and development (R&D) work associated with military-related technologies and new weapons systems. Labor unions, too, benefited from stable and high-paying jobs in industries supported by a steady stream of government money. Lastly, a large number of members of Congress reveled in the benefits accruing to their districts from an expanding array of military bases and defense contracts.

In what became a *back-door industrial policy* (defined here as the conscious use of government policies to steer or spur particular types of industrial and technological development), the national government provided particular industries with trillions of dollars for research and development, plants and

equipment, guaranteed markets, trade protection, and export promotion, among other benefits (see chapter 8). The industries in this aerospace-communications-electronics complex, known as the ACE sector, were dominated by such household corporate names as Boeing, General Electric, and IBM, as well as other, more specialized companies (like Grumman, Lockheed, and General Dynamics) that remained highly dependent on DOD contracts. These industries obtained their modern shape through their work with the military services.

The creation of these military-centered industries began during World War II. Whole new industries—such as aviation, synthetic rubber, and atomic energy—were spawned by the war and paid for with government money. After the war, the government continued to support these industries, and others in the ACE complex, through military contracts and military R&D investments. These investments in private industry, growing ever more substantial throughout the 1950s, represented a break from the past, since arms development had previously been reserved for government laboratories and arsenals. With this break, private industry replaced government arsenals as the major originator and designer of new weapons systems. Private industry (with the aircraft industry playing a very prominent role) pushed hard for the lifeline of government military contracts, since civilian commercial orders often could not sustain profitable operation.[29]

The Department of Defense also became the largest single sponsor of scientific research and technological development in the postwar era. As R&D increasingly became oriented to military needs, it also became dominated by the largest corporate firms and by elite universities. Military research and development is centered in institutions such as the Office of Naval Research (ONR), the Air Force Office of Strategic Research, the Army Research Office, and the Defense Advanced Research Projects Agency. ONR organized the military's first postwar sponsorship of private R&D. Besides directly employing 1,000 of its own scientists, by 1949 ONR was sponsoring 3,000 scientists in 1,200 R&D projects at 200 universities. ONR was also the first national agency to fund long-term basic research, as opposed to applied research. This basic research, however, was designed to stimulate more applied research in the military-related aerospace, communications, and electronics fields, focusing on missile systems, computers, and nuclear weapons.[30]

DARPA, created by Congress in 1958, eventually displaced ONR as a central funding agency for basic research. DARPA was designed to be relatively small in terms of personnel and budget. In 2016, it employed 240 scientists and engineers—its larger support staff was hired on a temporary contract basis, to minimize the development of a traditional, permanent bureaucratic setup—and spent almost $3 billion. DARPA did and still does rely on a very flexible,

nonhierarchical organizational structure, with a heavy emphasis on entrepreneurial program managers pursuing research projects considered to be unconventional and risky, though with potentially large future payoffs. (The Internet is perhaps the most famous product of DARPA's research projects.) Each project manager oversees contracted research teams located in private industry and major universities, so the small number of actual DARPA employees is leveraged into a much larger total number of R&D jobs.[31]

Research related to nuclear energy is handled in laboratories sponsored by the Department of Energy, which include the Argonne, Oak Ridge, Los Alamos, Brookhaven, Lawrence Livermore, Sandia, Ames, and Berkeley National Laboratories. The Department of Energy (DOE) manages a significant portion of the nation's R&D. DOE's Office of Science is "the single largest supporter of basic research in the physical sciences in the United States," including the provision of more than 40 percent of the total funding for physics, chemistry, materials science, and other areas in the physical sciences. DOE funds more than 7,000 individual research projects at universities, national laboratories, industry, and nonprofit enterprises. All of these labs operate under the direction of private contractors, which can be private corporations or universities. These labs and agencies are "in the government but not of it." Many depend almost exclusively on government support and serve governmental (predominately military) goals, yet they operate independently of it, too.[32]

Major universities are part of this national system of military-related R&D, enjoying government funds while retaining their independence from broad public scrutiny. Universities such as the Massachusetts Institute of Technology, Johns Hopkins University, the University of Washington, Stanford University, and the University of California at San Diego, among many others, have received billions of dollars in federal R&D money.

This array of postwar military-sponsored research and development, military contracts, military-related think tanks, and national laboratories eroded the traditional boundaries between the national government, private industry, and the nation's universities. These new linkages alarmed President Eisenhower, who feared militarization as the path toward greater government control of the economy. Yet the military-industrial heart of the national security state demonstrates the degree of cooperation and integration between the public and private sectors. Military-industrial integration grew and flourished precisely because of the friendly and cooperative relations between high-level military personnel and the leaders of America's industrial and financial sectors.[33]

Critics have highlighted the controversial and troubling aspects of these activities and relationships. The revolving door between industry and govern-

ment, as retired military officers took jobs with military contractors, created many conflicts of interest in the awarding of contracts. Government officials distributed contracts as a form of corporate welfare, to keep key suppliers enriched at the public expense, thus turning many contractors into "quasi-nationalized" entities. Military contracts distorted market forces, as government money enriched some companies over others, as well as aiding the newer aerospace, communications, and electronics firms. Meanwhile, traditional manufacturing industries suffered from increasing foreign competition. Lastly, the intimate relationships between the military services and their prime contractors created many opportunities for outright corruption.

Some of this corruption was institutionalized as part of the contract process. Companies provided low estimates for the cost of new weapons systems, making it easier to sell the program to government officials. But since weapons development often proceeded in an environment that emphasized performance over cost, the escalation of costs was implicitly encouraged. World War II's "cost plus a fixed fee" contracts became, after the war, "cost plus a percentage profit" contracts, encouraging an enormous run-up of costs by military contractors, who could thereby substantially increase their profits. The military services implicitly encouraged this, both because previously unknown technologies were being developed, and because the services wanted their own budgets to increase and thus had little interest in economizing. Delays and cost overruns became normal operating procedures in defense contracts, and a detailed examination of cost run-ups—standard procedure for other government expenditures—became difficult as military expenditures gained sacred cow status.

In some cases, the way that corruption was built into military contracting, and the dependence of some companies on government contracts, became exposed as costs for specific projects climbed and shoddy results accumulated. The most famous may be the C-5A Galaxy, a heavy-cargo transport plane built by Lockheed for the US Air Force shortly after Kennedy succeeded Eisenhower in the White House. Originally priced at $29 million, it was delivered in the early 1970s at a cost of $62 million (a comparable Boeing commercial aircraft—with the same size and carrying capacity—was produced at the same time for $23 million). Cost overruns rose to the tune of $1 billion, and the aircraft was delivered with major defects that were covered up by Lockheed, for fear that the government would hold up payments. In another setback for the company, it was learned in the early 1970s that Lockheed paid large bribes to facilitate foreign sales. With its poor performance and outright corruption exposed, and facing cancellation of military orders, the company teetered on the brink of bankruptcy. But the government rushed in with a $250 million

emergency loan guarantee in 1971 to save the company. Overcharging and shoddy work have continued to plague the company's operations, however, reflecting the often undemanding environment within which defense contractors operate.[34]

Large military expenditures became the essential glue that built and sustained the military-industrial complex. Military spending, in turn, remained an important pillar of the economy during the 1950s. Eisenhower may have successfully reined this in a bit (it went from $50.4 billion in FY 1953 to $40.3 billion in 1956, although ending up at $46.6 billion by 1959), but its impact still loomed large for the economy as a whole. The Korean War military buildup propelled the US economy out of its 1949 recession, and military aid and war contracts helped sustain and propel the European and Japanese economies as well. Government spending remained high as a proportion of US gross national product throughout the 1950s, and this large and growing presence of government spending as an important prop for the private economy was largely due to military and military-related expenditures. During the high points of the military buildup (1951–1953), which coincided with the years of the most dynamic economic growth for the entire decade, military spending remained larger than the total of private-sector investments in industrial plants, equipment, and residential construction.[35]

Military Keynesianism—government deficit spending in the form of military versus domestic investments and purchases—not private investment sustained the economy through the 1950s (for an explanation of Keynesianism per se, see chapter 11). When military spending was cut at the end of the Korean War (in 1953), the economy suffered its first recession since 1949, and it continued to demonstrate certain weaknesses throughout the rest of the decade. Still, economists have recognized that military spending remained "the major and almost exclusive dynamic growth factor" in the economy of the mid- to late 1950s. Paul Baran and Paul Sweezy summarize what was common knowledge among economists when they note that "the difference between the deep stagnation of the 1930s and the relative prosperity of the 1950s is fully accounted for by the vast military outlays of the '50s." *US News and World Report* noted in 1950 that the "Cold War is almost a guarantee against a bad depression." Even as late as 1985, during the Reagan military buildup, *Business Week* announced that "economists are counting on one thing to keep the economy growing: defense spending."[36]

John F. Kennedy and the "Flexible Response"

In the 1960 elections, presidential contenders John F. Kennedy and Richard Nixon both raised fears about a "missile gap" and a "space gap" between the

United States and the Soviet Union, a gap that purportedly left the United States vulnerable to Soviet advances throughout the world. Once Kennedy took office, despite quickly finding that the Soviets had a very small arsenal of ICBM missiles and that any supposed missile gap was pure fiction, he nonetheless promoted a huge new program of missile development. But this new military buildup did not end there. Kennedy drew on growing criticisms that the Eisenhower administration had emphasized nuclear weaponry to the detriment of conventional forces. Prominent critics like Henry Kissinger (who would become secretary of state under Richard Nixon) and Generals Maxwell Taylor and Matthew Ridgway argued that the United States was overreliant on an all-or-nothing nuclear deterrent and unprepared to compete with what was viewed as aggressive Soviet inroads throughout the Third World.[37]

Kissinger, Taylor, and Ridgway were among a growing chorus of voices that promoted the development of intermediate military capabilities, including the ability to fight "limited wars." This meant more money for conventional and unconventional forces (such as counterinsurgency Special Forces, like the Green Berets). Kennedy came to office prepared to be more aggressive about combatting revolutionary movements around the globe. He and his advisors realized that a heavy reliance on nuclear weaponry, bombers, missiles, and covert action could do little about the ostensibly Soviet-backed guerrilla wars that were making headway in many parts of the world (including many hot spots in Africa, Asia, and Latin America). Because of Eisenhower's choices, it was argued, the US military was unable to compete with the Soviets, short of nuclear war. Eisenhower's policies were inflexible, while Kennedy's proposals promised a more "flexible response" to what was seen as a different type of Soviet threat. Kennedy and his aggressive new secretary of defense, Robert McNamara (a former president of the Ford Motor Company), foresaw the need to fight two-and-a-half wars simultaneously (one in Asia and one in Europe, with a lesser conflict elsewhere), and set about building up US forces to do so. This led to what was, up to that point, the largest and quickest peacetime military buildup in American history.[38]

Still, much of the resulting expansion was focused on increasing the number of nuclear weapons, despite Kennedy's acknowledgement that there was no missile gap and despite his criticisms about Eisenhower's overreliance on nuclear forces. Kennedy added ten more Polaris nuclear-armed submarines, doubled the number of Minuteman ICBM's, and placed hundreds more long-range, nuclear-equipped B-52 bombers into operation, adding dramatically to the nation's ability to incinerate targets in China and the Soviet Union. (It has been estimated that in 1960, before this buildup occurred, US nuclear weapons could already kill 285 million people.) Kennedy did increase conventional forces: the army, the marines, and the air force gained new divisions and

squadrons. And he dramatically increased the army's Special Forces, or Green Berets, as an antiguerrilla force to combat Soviet aggressiveness in the Third World. NASA also grew enormously, as Kennedy sought to capture the nation's imagination in a way unlikely to encounter congressional resistance. Eisenhower had vetoed the Apollo space program in 1960, but Kennedy revived it. He increased NASA spending from $1 billion in 1961 to over $5 billion in 1964. By 1965, the agency and its contractors employed 411,000 people. Spending rose to $35 billion ($227.6 billion in 2015 dollars) in order to reach the moon in 1969, even though, in 1963, Eisenhower was quoted as saying that "anyone who would spend [up to] $40 billion in a race to the moon for national prestige is nuts."[39]

Kennedy did take risks in choosing McNamara as secretary of defense and asking him to reform military organization and budgeting. Instead of three service bureaucracies heavy with broad areas of overlapping and duplicating functions, McNamara built the Department of Defense into "a huge centralized bureaucracy, a new superagency that lessened the role of the services and of the senior military in major defense issues and in the policymaking process generally." McNamara closed hundreds of obsolete military installations, cancelled the development and production of a new long-range bomber and an antimissile defense system, and imposed a new system of planning and budgeting that centralized military purchasing (through the Defense Supply Agency). He cancelled less effective or more expensive systems, regardless of the previous division of funds among the services. The new, simplified system reduced paperwork and interservice duplication of weaponry, and it generated large savings that made up for some of the increases in military spending. Still, by emphasizing numerical limits in weaponry, McNamara implicitly encouraged military chiefs to spend as much as possible on each weapons system that was allowed. Moreover, the catastrophe of Vietnam demonstrated the degree to which McNamara never managed to assert centralized, civilian control over the Pentagon.[40]

The Aftermath of the Vietnam War

By 1964, the national security state had settled into its new form, and no major changes would be initiated until the late 1960s, when the obvious failures in Vietnam reduced the military's prestige to near all-time lows. Complementing this change in attitudes, there were increased pressures after the Vietnam War for cuts in military spending and a peace dividend, to be used for increased domestic spending. Military spending had grown rather sharply under Kennedy, to pay for both the new buildup and the new emphasis on flexibility to fight counterinsurgency wars. But fighting in Vietnam and throughout South-

east Asia raised the military budget even more dramatically. Military spending, excluding veterans programs, rose from $48 billion in 1960 to almost $55 billion in 1964, before rocketing to $82.5 billion in 1969, the second-highest military spending level in US history, which was almost three times the cost of domestic discretionary spending. From 1964 to 1968, the United States expended almost $200 billion to fight communism in Vietnam, but less than 10 percent of that was spent to address the huge problems in US urban areas. Altogether, military spending related to the war in Southeast Asia would top out at $4.3 billion a month, coming to over $2.2 trillion in 2015 dollars.[41]

By the beginning of 1968, the US military and national security state was at the height of its postwar prestige and power, but it was on the cusp of a major decline. Personnel levels were very high, at 3.5 million soldiers, sailors, airmen, and marines in the uniformed services, 1.6 million in the reserves and the National Guard, and another 1.3 million civilians in military-related jobs. There were several thousand bases in the United States and over 500 overseas, hosting a total of 1.2 million military personnel. The US arsenal included 32,500 nuclear warheads, over 1,700 strategic missiles, 650 intercontinental bombers, 350 major surface ships, and 100 submarines. At that point, the Pentagon's assets were valued at over $500 billion.[42]

At the same time, however, pressures grew within Congress to cut military spending to produce a peace dividend, while the continuing quagmire of Vietnam led, for the first time, to increasing questions and concerns about the relatively unchallenged postwar growth of military power. Direct military spending by FY 1968 represented almost 70 percent of discretionary spending. By 1970, a majority of Americans wanted reductions in this spending applied to domestic and social investments. Public trust in and support for the military began to ebb after 1968, as critics exposed the many falsehoods perpetrated by both military and civilian leaders to begin and prolong the US involvement in Vietnam. The American public took a hard look at the war's waste in lives and money. With President Nixon pursuing warmer relations with the communist Soviet Union and opening up relations with communist China, Americans were left wondering why we needed to commit so many resources to the military. Lastly, congressional revelations about cost overruns and poor management practices within the Pentagon illustrated many sordid aspects of what Eisenhower called the military-industrial complex.[43]

Despite these new pressures, President Nixon was able to blunt most calls for severe cuts in military spending. In FY 1974, a post-Vietnam low point in military spending was reached, after which it began to rise again. But the military did not really suffer because of the cuts. Troop withdrawals from Vietnam reduced costs enormously, and the armed services cut back on the number of civilian and military personnel, which saved even more money. Five hundred

military installations were closed. Reductions in air force squadrons, navy ships, and army divisions also meant large decreases in expenditures. Savings were also generated as the United States increased its exports of high-technology weaponry, as a way of recouping R&D investment costs. (The early 1970s began a trend of substantial military sales that made the United States the largest supplier of military hardware in the world.) In a return to some of the strategic concepts of the 1950s, greater reliance was placed on nuclear weapons, to make up for the reductions in conventional forces. The military services also planned to fight only one-and-a-half wars, instead of the two-and-a-half wars under previous plans.[44]

Democrats pressed hard for more cuts, and Senator George McGovern ran for president in 1972 on plans to cut military spending by one-third. Nixon's campaign effectively parried these pressures by characterizing McGovern—who had served in combat in World War II, while Nixon had not—as a radical extremist who would not be willing or able to deal with our communist adversaries, and whose policies would dramatically weaken the United States in world affairs. McGovern's landslide defeat severely intimidated Democrats from again raising the issue of military spending, closing a window on a serious debate about the defense budget until the collapse of the Soviet Union in 1991. As a result, military spending remained relatively high through the 1970s, as expenditures on the military and on veterans affairs continued to account for more than 60 percent of discretionary spending.[45]

Jimmy Carter, the "New Cold War," and the Reagan Military Buildup

Although the Reagan administration dramatically increased military spending, the rise actually began during the last two years of Jimmy Carter's presidency. Carter came into office partly by riding popular dissatisfaction with the means employed to wage the Cold War. The prior Nixon-led détente resulted in a thaw in US-Soviet relations; in all sorts of new social, cultural, scientific, and economic interactions; and in a serious attempt to limit nuclear weapons through a Strategic Arms Limitations Talks (SALT) treaty. As a result, Carter tried to refocus American foreign policy on issues other than East-West tensions. To this end, he articulated new goals, such as a commitment to human rights, a commitment to end the arms race in nuclear weapons, and a desire to replace the focus on East-West tension with a concern for the growing disparities between developed and underdeveloped nations. Nonetheless, Carter also continued the program of increased defense expenditures begun by his predecessor, President Gerald Ford, that focused on weapons modernization.[46]

Carter managed to pursue his new goals through the first two years of his administration, before world events intervened. The 1979 Iranian and Nicaraguan revolutions, and the hostage taking in Tehran that December, strengthened hard-liners, who distrusted the Soviets and sought to revive Cold War tensions. The Soviets' invasion of Afghanistan, in response to their concerns about the spread of Islamic fundamentalism, was interpreted by hard-liners as evidence of sinister Soviet intentions and Carter's weakness in protecting US national security. Carter's own harsh public condemnation of the Soviets played into hard-liner criticisms of his policy, and his stringent anti-Soviet rhetoric was followed by large increases in defense spending and cancellation of further SALT negotiations (not to mention canceling American involvement in the 1980 Moscow Olympics). Détente was officially finished.[47]

This new environment played into presidential candidate Ronald Reagan's alarmist declaration that the United States suffered from a "window of vulnerability" to Soviet attacks. While most objective measures showed that the United States was still far ahead of the Soviets militarily, Reagan successfully exaggerated the Soviet threat. Many Americans were happy to return to the familiar ground of simplistic US-Soviet antagonisms after almost two decades of turmoil. Reagan certainly accommodated this desire for simplicity, demonizing the Soviets as the "evil empire." With his self-proclaimed charge to see America ride high again, Reagan provided a huge boost to defense spending and promoted a renewed focus on CIA covert actions. American troops were kept out of difficult situations, for the most part, while the military focus remained on upgrading high-tech nuclear weaponry and increasing investments in low-tech covert action. Carter had boosted narrow defense spending from $105 billion in FY 1978 to $134 billion in his final budget in FY 1980, with significant new investments targeted for modernizing weaponry. Spending then skyrocketed under Reagan, to $185 billion in FY 1982, before topping out at $303 billion in FY 1989, more than a doubling of annual defense spending. The Reagan buildup contained the largest peacetime military budgets in US history. Even adjusting for inflation, Reagan's annual military budgets were larger than those during the Korean and Vietnam Wars, both of which entailed huge deployments of combat units halfway around the globe.[48]

PAYING FOR RONALD REAGAN'S MILITARY BUILDUP

Part of this military splurge was paid for by moving money away from domestic social spending. For example, just during 1983, $30 billion was subtracted from expenditures on Medicare, food stamps, school lunches, welfare, education assistance, jobs-training programs, and the like. Much of the rest was paid for by piling up the largest peacetime debt in the nation's history. After

promising to balance the national budget in his first term, Reagan ran up budget deficits of $128 billion and $208 billion during his first two years in office, and these continued, at around $200 billion per year, for the rest of his presidency. Bruce Jansson finds that if military spending had simply been held to Carter's already-inflated 1981 military budget, the nation would have saved $864 billion through 1992.[49]

The buildup under Reagan's presidency was justified, in part, by the new stated need to be prepared for the unlikely prospect of fighting three-and-a-half wars at once, up from two-and-a-half under Kennedy and Johnson, and one-and-a-half under Nixon, Ford, and Carter. This scenario required extensive new weaponry, including new tanks, bombers, fighter aircraft, cruise missiles, and a huge expansion of the US Navy. John Lehman, Reagan's secretary of the navy, asked for $1 trillion dollars to upgrade the navy by adding twenty-seven new cruisers, forty new Trident submarines, and $128 billion in new aircraft to go along with three new aircraft carrier groups (the Soviets only had two aircraft carriers, while the US Navy had thirteen at this point). Air force spending increased the most rapidly, almost doubling, while the navy received the largest overall share of the new outlays. The army, with its greater reliance on less-expensive, nonnuclear weapons, had to make do with the smallest share, about $547 billion from FY 1982 to FY 1989. Much of the added military expense came in the form of vast new investments in the weaponry of nuclear war, with spending on preparations for nuclear war doubling under the Reagan administration.[50]

During the 1970s, the composition of the defense budget had shifted toward greater personnel costs, and it shifted again during the Reagan years to a greater concentration on developing new weaponry. (Spending on weapons systems tripled from 1980 to 1985, while the number of active-duty military personnel had grown only slightly.) Most of this new weaponry was designed to deliver nuclear warheads from new submarines, new bombers (B-1 and B-2 bombers), new land-based missiles and cruise missiles (the Minuteman and MX missile systems), Trident II submarine-based missiles, and the Strategic Defense Initiative (SDI), which was dubbed "Star Wars." The Soviets' lead in land-based missiles provided the justification for the nuclear buildup. But arguments about the supposed Soviet superiority ignored the fact that US nuclear deterrence rested on three legs (a nuclear triad that included not just land-based missiles, but also submarine- and bomber-based ones). US superiority, resting on the more maneuverable submarine- and bomber-based missiles, was ignored as more money poured into all three legs of the triad under Reagan's 1981 "strategic modernization" program.

The Reagan administration made "winning" a nuclear war a priority. More and more money ($350 billion during the 1980s) was being spent on a sophis-

ticated, computer-directed autowar system (the Military, Strategic, Tactical, and Relay System, or MILSTAR), in which space satellites and computers could continue to order launches and coordinate nuclear strikes against the Soviet Union for up to six months after major US cities and military installations were destroyed. According to President George H. W. Bush, "that's the way you can have a winner," referring to MILSTAR's supposed ability to preserve "command, control, and communications" capabilities after much of the existing civilian and military infrastructure would already have been destroyed. (MILSTAR continued to be funded, despite the collapse of the Soviet threat it was supposed to contain.)[51]

Other exotic weaponry followed, as DARPA funded far-fetched projects to design and deploy robot soldiers that could operate in a landscape devastated by nuclear war. No matter how implausible these concepts seem, even now there is little, if any, open debate about them, since the projects themselves have remained top secret. While secrecy has always been a centerpiece of the national security state, the growth of secretly funded programs skyrocketed under the Reagan administration. Neither the American public nor their representatives in Congress know about many of these developing new capabilities, since they are included in what has come to be known as the "black budget," where projects are kept off the books, remaining secret and unaccountable. The black budget grew eightfold from 1981 to 1985, peaking at about $36 billion a year (roughly $100 million a day) in 1989. This was larger than the national budget for transportation or agriculture, two times the education budget, and eight times the budget for the EPA. By itself, it was larger than any other country's military budget, aside from the Soviet Union's.[52]

COST OVERRUNS AND FLAWED RESULTS

The weapons systems developed during the 1980s and 1990s were much more expensive than those of the past. Their production, similar to that of many of their predecessors, was plagued by scandal and corruption. Many of the navy planes constructed during the Reagan buildup could not be used during the first Gulf War. The Trident II missile system (which includes both the missiles and the submarines designed to fire them), probably the most expensive single item (at $155 billion in 1989) in the defense buildup, essentially replicated the existing Trident I, and in early tests, the Trident II missiles could not fly. The B-1B and B-2 bombers suffered from production delays, huge cost overruns, and serious operational mishaps. The B-2s, at over $2 billion apiece (twenty-one planes cost $45 billion; each is worth three times its weight in gold), deteriorate in rain, heat, and humidity. Moreover, every B-2 requires up to 124

hours of maintenance time for each hour it spends in the air. The new MX missiles had flawed guidance systems.

Spending so much money so quickly also created predictable problems, with outright fraud and corruption from the nation's foremost military contractors. Rockwell International, Lockheed, Northrop, TRW, General Dynamics, General Electric, and Boeing were among the top contractors that were convicted of criminal fraud, which was related to overcharging the government and bribing government officials. In 1993, after a three-year study, the General Accounting Office, an investigative arm of Congress, detailed how, during the 1980s, the Pentagon understated the cost of nuclear missiles by billions of dollars, deliberately overstated the radar-evading capabilities of new bombers, and exaggerated the threat posed by the Soviet Union. The Soviet threat had vanished almost overnight, yet many of these weapons, while redundant, continue to remain a central part of the US arsenal.[53]

The Elusive "Peace Dividend"

With the collapse of the Soviet bloc in Eastern Europe in 1989/90, and then of the Soviet Union itself in late 1991, many in Congress and throughout US society demanded a "peace dividend," to be produced through large drawdowns in defense spending that could be applied to domestic investments and retirement of the national debt. Cuts in defense spending did proceed, but they proved to be remarkably limited. The reduced 1999 military budget (after which military spending started to increase again) accounted for roughly 85 percent of the average amount spent on the military from 1976 to 1990, actually maintaining spending at or above pre-Reagan levels. The collapse of the Cold War eliminated the prime reason for the dominance of national security in American political life, but it only marginally reduced the size and scale of the national security state, because military spending had become so central to the nation's political and economic order.

GEORGE H. W. BUSH

Although George H. W. Bush came to office in 1989 ready to continue the fight against Soviet communism, he found himself having to deal with the collapse of the enemy he had prepared himself to confront. Nonetheless, even in the face of growing Soviet weaknesses, he continued to defend high levels of military expenditures. Iraqi president Saddam Hussein's invasion of Kuwait in 1990 offered an opportunity for the president to promote national security expenditures and showcase US military capabilities. With the Soviet collapse later that same year, however, pressure again increased for military cutbacks.

With the Democrats in Congress divided, and with Bush challenging their commitment to the nation's defense, the Pentagon developed seven war scenarios, each of which would require continued heavy investments in the national security state.

Still, pressures built for cuts. Bush's own Defense Intelligence Agency director even told Congress that no Russian offensive threat existed in the wake of significant cutbacks in their military forces. In the end, the Democrats agreed to cuts that brought spending down merely to pre-Reagan levels, committing $1.5 trillion to defense spending over five years (about $500,000 a minute). Bush nonetheless had to acknowledge that the Soviet/Russian threat had diminished substantially. He did so with the Conventional Forces in Europe Treaty, along with the Strategic Arms Reductions Treaty (START I), which eliminated thousands of nuclear missiles and reduced US forces in Europe. Bush also acted unilaterally to bring US forces off permanent nuclear alert, as well as to destroy and demobilize some nuclear capabilities.[54]

WILLIAM J. CLINTON

Even with George H. W. Bush's reductions, the extent of the limited victory over the continuance of very high military spending became clear in 1992, when Democratic presidential candidate Bill Clinton promised to only cut $60 billion from the military budget over five years. When President Clinton later proposed to cut $2 billion more, on top of the $12 billion in reductions that were already planned (out of a $291 billion budget), General Colin Powell, the chairman of the Joint Chiefs of Staff, publicly attacked him. Clinton not only backed away from his proposed cuts, thereby demonstrating his fealty to the existing system of military expenditures, but he also lobbied Congress against cuts of $29 billion in the CIA's budget, at a time when that agency received more than three times the combined national investments in education and the environment.

Clinton's original plans—to eliminate duplication by realigning the missions of the three military services and consolidating their functions and weaponry—were also openly rebuffed by Powell, who countered Clinton's proposal for $60 billion in military spending cuts with reductions that added up to only 1 percent of what Clinton was looking for. Powell followed up this resistance with a new plan to fight two Iraq-sized wars at once (each requiring 500,000 or more troops, accompanied by all the necessary supporting weaponry and equipment). At that time, Iraq and North Korea, the likely US enemies, together spent $9 billion on their respective military forces, while the United States spent $252 billion. As the *New York Times* noted in a 1995 editorial entitled "The Two-War Fantasy," the United States was nearly outspending the

rest of the world combined, a list that included many of our allies. (Together, the United States and its allies accounted for over two-thirds of the world's military spending at that point.) As a 1997 congressional review panel concluded, the two-war strategy had become "a means of justifying the current force structure—especially for those searching for the certainties of the Cold War era."[55]

Despite Clinton's decision to make only marginal cuts in Cold War funding levels, and despite the fact that all the cuts up to that point had been ordered by his predecessor, George H. W. Bush, in the 1994 midterm elections Republicans ran on a platform claiming that Clinton had dangerously cut military spending. To the contrary, military spending under Clinton had exceeded what George H. W. Bush had projected before he left office, and military spending never really fell below pre-Reagan levels, despite the closing of about 180 out of 481 domestic military bases. When military spending bottomed out during the period from 1996 to 1999, it was at levels relatively equal (in inflation-adjusted dollars) to those during the Kennedy military buildup in the early 1960s, and higher than all the post-Vietnam military budgets of the 1970s, despite the fact that our primary adversary, the Soviet Union, no longer existed, and its remaining military power, Russia, had slashed its military procurement budget by 77 percent since 1991. When Republicans gained control of both the House and the Senate in the 1994 elections, however, they quickly added $20 billion to Clinton's defense budget, primarily for Cold War–era weaponry, such as the B-2 bombers (designed to penetrate Soviet defenses and drop nuclear warheads) and the Seawolf-class submarines (nuclear-powered, fast-attack submarines). Clinton himself proposed to begin substantial new investments in military weaponry when, in early 1999, he announced that he would boost military spending by $110 billion over the next six years, the largest increase since the Reagan era.[56]

The Impact of 9/11

INTELLIGENCE AGENCIES

Intelligence-gathering activities did not begin and end with the CIA. Each military service—the army (Army Intelligence), the navy (Office of Naval Intelligence), the air force (Air Force Intelligence, Surveillance, and Reconnaissance), and the marines (Marine Corps Intelligence, Surveillance, and Reconnaissance Enterprise)—has maintained its own intelligence force. In addition, the National Security Agency was established in 1952 to conduct electronic surveillance of the world's communications. The National Reconnaissance Office, the largest intelligence agency in budgetary terms, has conducted space-borne or satellite reconnaissance, beginning in 1960. The Federal Bureau of Investigation par-

ticipates in gathering intelligence domestically. Cabinet-level departments also all have their own intelligence components: State (Bureau of Intelligence and Research), Energy (Office of Intelligence and Counterintelligence), and Treasury (Office of Intelligence and Analysis). Other additions to the spy bureaucracy were the Defense Intelligence Agency (1961) and the National Imagery and Mapping Agency (1996), renamed the National Geospatial-Intelligence Agency in 2003. This disparate array of intelligence agencies was topped off by a National Intelligence Council, composed of officials drawn from all the intelligence agencies. The council served the director of central intelligence, who was the head of the entire intelligence community. As of 2001, the spy bureaucracy consisted of the fourteen agencies listed above and had about 100,000 employees.[57]

The system changed dramatically after 9/11, as Congress and the George W. Bush administration poured money and resources into expanding the nation's intelligence apparatus, including the creation of the cabinet-level Department of Homeland Security in 2002. As a 2009 *Washington Post* study, authored by Dana Priest and William M. Arkin, summarized, "The top-secret world the government created in response to the terrorist attacks of September 11, 2001, has become so large, so unwieldy, and so secretive that no one knows how much money it costs, how many people it employs, how many programs exist within it, or exactly how many agencies do the same work." They noted that at that time, the US intelligence budget was about $75 billion, two-and-a-half times its size before 9/11, and the number of employees in the intelligence agencies had more than doubled. The Bush administration and Congress, responding to complaints about blurred lines of responsibility and authority, reorganized the intelligence system by bringing the various agencies under the control of a new Office of the Director of National Intelligence (ODNI). But the helter-skelter growth of the system has made it difficult, if not impossible, to coordinate and control. As Priest and Arkin reported, "Many officials who work in the intelligence agencies say they remain unclear about what the ODNI is in charge of."[58]

MILITARY SPENDING

George W. Bush

The September 11, 2001, terrorist attacks changed everything regarding the post–Cold War attempts to rein in military spending. In 2000, George W. Bush had campaigned on making "hard choices" about the military's weapons systems, namely that weapon systems designed in the 1980s to combat a Soviet enemy would have to be scrapped in favor of new, lighter, high-technology weapons, such as unmanned ground vehicles and drone aircraft. Bush wanted

more military spending, but, to pay for new weapons systems, he argued that some of the Cold War systems would have to be sacrificed. In early 2002, after the terrorist attacks, Bush found that Congress was now willing, and even demanding, to fund many weapons programs that had been slated for termination.

Bush proposed a $48 billion increase in military spending for 2003, the largest since Reagan's first year, and then proposed an increase of $120 billion for the next five years, leading to $2 trillion worth of military spending over the period from 2003 to 2008. The FY 2003 budget topped out at close to $400 billion, including the Department of Energy's nuclear stockpile programs. The 2004 military budget was $100 billion more than when Bush took office. In contrast, the military services' grandest pre–September 11 budget hopes were for a $330 billion budget by 2005. Counting the wars in Afghanistan and Iraq and the Department of Energy's nuclear programs, the 2005 budget was over $500 billion, and in 2015 it was over $620 billion. The consequences of these policies are clear. President George W. Bush inherited a budget surplus, and the 2001 Pentagon budget was $305 billion. After the 9/11 attacks removed all limits to military spending, the Pentagon's expenditures doubled, and the wars in Afghanistan and Iraq were funded through borrowed money, adding $5 trillion to the public debt by the time Bush left office.[59]

Much of this spending was targeted for the outdated weapons systems that Bush had originally designated for termination. Out of the $135 billion in the 2004 budget for weapons development and production, only $15 billion was designated for *new* military technologies and weapons systems, and just $9.4 billion was targeted for the war on terrorism. (The war in Afghanistan had a budget of $6 billion.) Critics have noted that the older Cold War–oriented weaponry is ill suited for the new types of security threats faced by the United States in the wake of the September 11 attacks. As Lawrence Korb, assistant secretary of defense under President Reagan, has stated, "Throwing all this money at the Pentagon and refusing to make choices . . . [removes] any incentive for the Pentagon to become more efficient or for military leaders to focus their resources on innovative systems." Korb and many others have argued that the war on terrorism is being exploited to maintain and increase a national security apparatus that is anachronistic in many ways. Military might in Cold War terms—nuclear weaponry and conventional forces—will be less effective in the war on terrorism than financial, diplomatic, intelligence, and law enforcement tools. Yet the Bush administration continued to promote outdated weaponry, including a rushed deployment of the flawed "Star Wars" missile defense system and a renewed focus on nuclear weaponry.

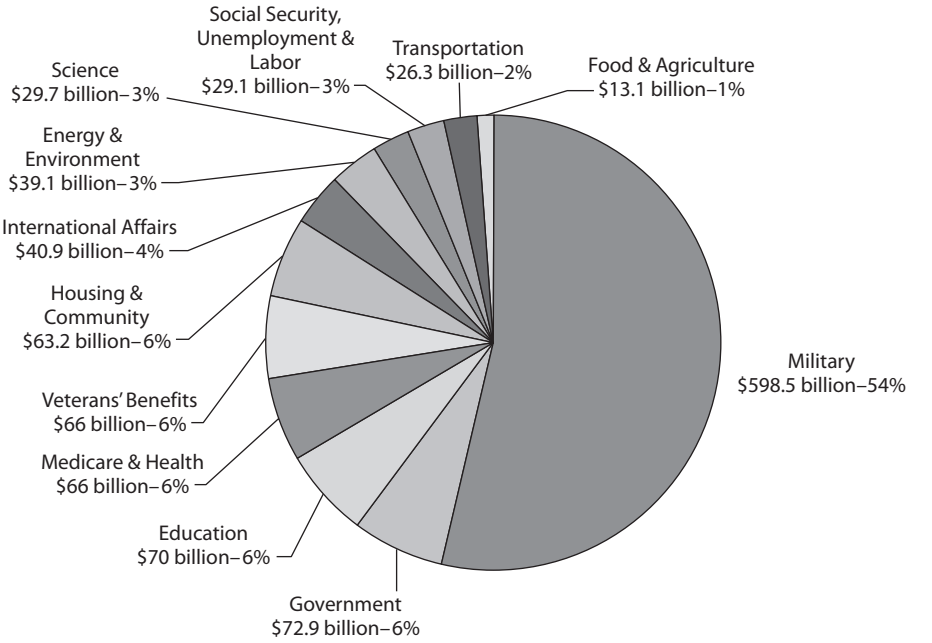
Barack Obama

The attacks of September 11 and the seemingly perpetual and permanent war on terrorism have provided an unending justification for an extraordinary continuation, and even an expansion, of the national security state.[60] When Barack Obama came to the presidency in 2009, he was sharply critical of the Iraq War and the secrecy, torture, and other extreme methods pursued by the Bush administration in the wake of 9/11. Obama managed to outlaw torture, followed through on Bush's plan to remove combat troops from Iraq, and demonstrated a marked reluctance to pursue further commitments of combat troops to other hot spots. Yet in no way has Obama disrupted or interfered with the foundational national security consensus that continues to guide the United States, which adheres to the following tenets:

- American military power is essential for organizing the world;
- only the United States has the right, the duty, and the ability to exercise this kind of power;
- military means and goals therefore dominate over any alternative approach to world affairs; and
- the United States therefore faces a permanent military crisis, making it imperative to prioritize military goals over all others.

This consensus has remained essentially unchallenged from Truman up through Obama. As retired US Army colonel Andrew Bacevich has noted, Obama demonstrated his allegiance to the existing national security consensus by retaining many of the same civilian and military personnel that guided policy during the George W. Bush years, and by expanding the war in Afghanistan. By these choices and many others, Obama was signaling clearly that he had no intention of rocking the national security boat that has been dominant since World War II.[61]

We are spending more on the military now than we did during the Korean and Vietnam Wars, which involved the commitment of hundreds of thousands of combat troops halfway around the globe. While many politicians call for belt-tightening and cutbacks in domestic policy, the country's military and intelligence agencies remain sacrosanct. The only question remaining is, how much more can we, as a nation, pour into their coffers? America recovered only a minimal peace dividend at the end of the Cold War, and with a now seemingly perpetual war on terrorism, any restraints on the US military and security budgets have been removed. The Cold War's average annual military budget remained at about $360 billion (in constant dollars), yet the 2015 budget Obama proposed was over $620 billion. If we add veterans pensions, retirement and health care benefits, current health care costs for wounded veterans, homeland security costs, and the military's share of the national debt, we are talking about


Social Security, Unemployment & Labor $29.1 billion–3%
Transportation $26.3 billion–2%
Food & Agriculture $13.1 billion–1%
Science $29.7 billion–3%
Energy & Environment $39.1 billion–3%
International Affairs $40.9 billion–4%
Housing & Community $63.2 billion–6%
Veterans' Benefits $66 billion–6%
Medicare & Health $66 billion–6%
Education $70 billion–6%
Government $72.9 billion–6%
Military $598.5 billion–54%

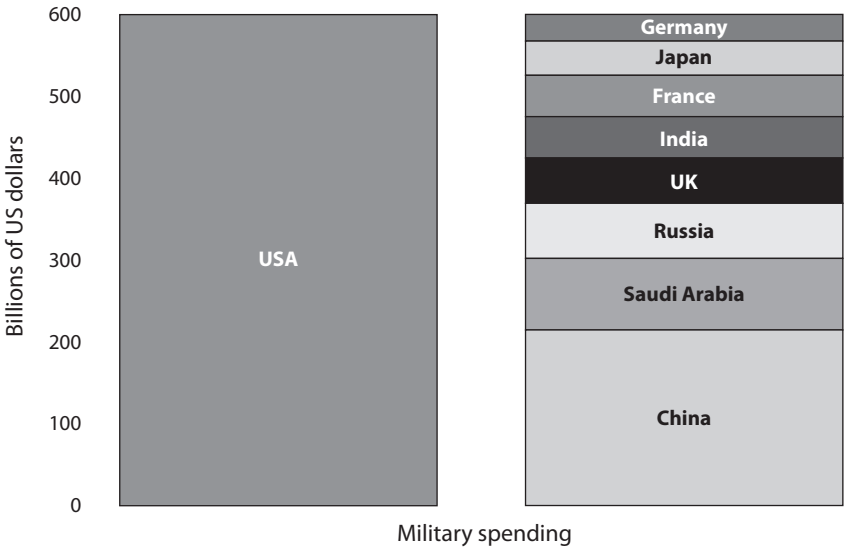
Discretionary spending in 2015: $1.11 trillion.

Office of Management and Budget, National Priorities Project, https://www.nationalpriorities.org, used by permission.

a $1 trillion budget, namely, over 50 percent of discretionary spending. As we can see in the graph below, the United States in 2015 spent $600 billion on direct military expenses, while potential adversaries China and Russia together spent $266 billion. Combining our allies' spending with our own, this accounts for over three-fourths of world's military expenditures.[62]

Conclusion

Continuing large military expenditures demonstrates that over the years, the US national security state has developed its own bureaucratic momentum and support from influential interest groups. Even before the September 11 attacks, military spending was already high and still growing, so it is not just external threats that determine the enormous commitment of resources to military and intelligence forces. Rather, as President Eisenhower warned, it is the result of the internal pressures of military bureaucracies, private corporations, and congressional recipients of military funding. Besides the importance of military projects to the economic welfare of many congressional districts, military contractors spent $90 million lobbying Congress during the first eigh-



US and world military spending, 2015.

Stockholm International Peace Research Institute, National Priorities Project, https://www.nationalpriorities.org, used by permission.

teen months of the George W. Bush administration and employed many former members of Congress to lobby their colleagues who were still in the House and the Senate.

In one particular case of congressional pressure, when Newt Gingrich was Speaker of the House, his district received over $1 billion from 1995 to 1998 for Lockheed to produce C-130 transport planes the air force did not want. The Seawolf submarine project continues as a $4.3 billion gift to Electric Boat in Connecticut, and the B-2 bomber is a multibillion-dollar offering to the many congressional districts that benefit from its production. Debates about these issues have made it clear that members of Congress see the Pentagon budget as a jobs program. Meanwhile, traditional jobs programs or welfare state spending are vilified. While Congress voted another $27 billion for the B-2 bomber in 1997, it also cut 150,000 disabled children from the Supplemental Security Income programs. The $800 million saved through that SSI cut represents one-third of the cost of *one* B-2 bomber. The minimal cuts and then increases in military spending during the 1990s contrasted sharply with the $53 billion in domestic spending cuts between 1994 and 1999.[63]

The imperatives of a permanent preparation for war have warped our politics, our budgets, our society, and our foreign policy. Besides the distortions in our budgetary policies created by unchecked military expenditures, the

aftermath of 9/11 also accentuated other elements of the national security state that critics view as anathema to a democratic nation. These include heightened secrecy; the manipulation of public opinion; distortions in our politics by the George W. Bush administration's claims that critics of its policies have been disloyal in some way; and increased surveillance of Americans, regardless of their connections to terrorist threats. The national security state poses fundamental challenges to a democratic society by creating an insulated and centralized set of institutions that are beyond the checks and balances of normal constitutional processes. Secrecy cloaks what these institutions do, and patriotism and easily manipulated fears protect them from most criticisms. Civilian control of the military is undermined by the fact that civilian leaders themselves have become militarized in their approach to most of the world's problems, accepting a national security consensus that prioritizes military goals without question. William Hudson summarizes a large part of these concerns when he notes, "The national security state that was created . . . in the name of protecting US democracy from external threats . . . has also engaged in practices that were destructive of democracy at home." The so-called war on terrorism provides exactly the kind of chronic justification needed to keep the United States on a perpetual war footing, a state of affairs that the Framers of the Constitution understood would represent a dire threat to the republic they sought to build.[64]

Notes

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9. Brian Waddell, *The War against the New Deal: World War II and American Democracy* (DeKalb: Northern Illinois University Press, 2001), 153–57; Hogan, *Cross of Iron*, 36.

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13. George T. Kurian (ed.), *A Historical Guide to the U.S. Government* (New York: Oxford University Press, 1998), 97–99; Congressional Quarterly, *Congress and the Nation*, 1:249.

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The Domestic Security State

The domestic security state serves to protect American citizens from crime and other threats, including terrorists. Most of the law enforcement in the United States takes place at the state and local level. By the late 1990s, while the national government employed about 120,000 in law enforcement, the states and other localities (counties, cities, etc.) employed over 1.5 million. There are functions that only the national government can fulfill, however, in the federal order of the United States. Dealing with crime that crosses state lines and protecting the nation's borders are two justifications for the emergence of a national law enforcement presence. Also, the federal government's taxing powers and role in regulating interstate commerce have created pressures for a national law enforcement establishment. The attacks of September 11, 2001, have only increased pressure for broader and more-coherent national law enforcement.[1]

Similar to the national security state, the domestic security state is built on the basic foundations of any government, in this case, ensuring internal security and order. As Charles Tilly has outlined, war and security are the sine qua non of any political system, and the domestic security state therefore serves one of the key functions of the survival of any society. Controversies over the domestic security state arise from official abuses of authority in repressing those opinions and behaviors that the government or the majority disapproves of. Throughout the twentieth century, and continuing to the present time, many have expressed concerns about how the goal of securing domestic security has often led to a clash with privacy rights and civil liberties (the US Constitution guarantees that our homes and our persons are protected from excessive use of the government's coercive power) and with basic political liberties (the US Constitution guarantees the freedom to influence the government through our speech and our associations with others).[2]

Thus our examination of the domestic security state involves the many clashes between government actions and constitutional rights to freedom of speech and association, and the right to be secure from unlawful searches. As we have seen with the 2013 and more-recent revelations from Edward Snowden, the government has, since 9/11, been engaged in a wholesale violation of consti-

tutional protections by secretly and indiscriminately collecting the telephone records of millions of Americans, while also collecting in bulk "all electronic communication by all people around the globe." This was not the first time the US government had engaged in what would seem to be unconstitutional actions against its own citizens. In the post–World War II period, hundreds of thousands of Americans, including Martin Luther King Jr. and Albert Einstein, had been labeled "subversive," simply because of their political beliefs.[3]

The various law enforcement functions of the national government have led, in a natural progression, to the emergence of the various national law enforcement agencies. Protection of the nation's borders resulted in the creation of the Coast Guard very early in America's history. Later came the Bureau of Customs, the Immigration and Naturalization Service, and the Border Patrol. Taxing and currency issues led to the creation, within the Treasury Department, of the Secret Service (which protects the president and investigates counterfeiting), the Bureau of Alcohol, Tobacco, and Firearms (which enforces certain tax laws, along with enforcing laws relating to the three items in its title), and the Internal Revenue Service. National powers over interstate commerce and interstate crime have led to laws concerning illegal drugs and, in 1973, to the creation of the Drug Enforcement Agency. The national level of domestic security also includes federal marshals, as well as probably the most famous and prominent of the national agencies, the Federal Bureau of Investigation. The FBI grew over time, not only because of new congressional provisions dealing with interstate crime, but also because of the bureau's role in fighting those defined as subversives. On many occasions, even the Central Intelligence Agency, despite prohibitions in its charter, acted domestically, as have the various military intelligence agencies. After the 9/11 attacks, the domestic security state underwent a broad reorganization with the creation of a new Department of Homeland Security.[4]

Most of the law enforcement activities of the national government are rather mundane and easily understood in terms of the above functions. But some of these activities take on much greater prominence for the purposes of this chapter, because of the clash between state power, on the one hand, and civil and political liberties and privacy rights, on the other. Along with the more mundane law enforcement activities of the domestic security state, an intention and a power to monitor and even disrupt those persons defined as "official domestic threats" have emerged. It is not the legitimate law enforcement goal to protect and defend the American public that is, in itself, troubling, but rather the application of the law enforcement machinery against those defined officially as domestic threats *before they have done anything wrong*. Prevention of criminal activity is a legitimate goal for security forces. But what has troubled critics is the disruption of legitimate political liberties as officials target

not criminal activity, but the exercise of constitutionally guaranteed democratic rights. Additionally, in response to fearful events, government officials have often sought powers that infringe upon basic civil liberties. Many of the tactics covered in this chapter have been the type that are denounced only *after* they have been exposed.

It would hardly be necessary to focus on this topic if instances of official excessive reactions to supposed threats were not so evident in our modern history. We end this chapter with an examination of the post-9/11 period's amped-up response to potential domestic terrorist threats with the passage of the PATRIOT Act and the extensive new domestic surveillances, especially those undertaken by the National Security Agency. But this chapter begins with reviews of many more of the instances of government overreaction to potential threats to domestic security, from the suppression of those who dissented during World War I, to the post–World War I Palmer Raids against those thought to be subversives, to the internment of Japanese-Americans during World War II, to the post–World War II domestic campaign to harass communists and others defined as subversive, to the 1950s COMINFIL and the 1960s COINTELPRO efforts against domestic dissenters.

A partial list of those investigated and harassed in the name of domestic security includes ex-Beatle John Lennon; authors Helen Keller and John Steinbeck; US Supreme Court justice William O. Douglas; civil rights leader Martin Luther King Jr.; scientist Albert Einstein; boxers Joe Louis and Muhammad Ali; football star Joe Namath; and celebrities Charlie Chaplin, Marlon Brando, Paul Newman, Tony Randall, Donald Sutherland, Harry Belafonte, and Jane Fonda. From a legitimate concern with order and stability, a less legitimate, repressive reaction has emerged, as those in power and with power seek to limit challenges to the existing distribution of power in American society. Exceptional times produce criticisms and movements for change, and the United States has witnessed many of these reactions during the twentieth century. Threats to the status quo, however, have often been defined officially as "deviance" or "subversion," which has spawned various official efforts to monitor, control, or disrupt these movements. This has set up a clash between the political liberties that form the basis of a democratic society and the order-preserving goals of public officials.

Some of the moments of official repression do not fit the equation of national officials versus political dissent. The internment of Japanese-Americans during World War II and the drug war involve issues of privacy rights and civil liberties. The war on drugs has taken on aspects of a domestic crusade at times. While it expresses a legitimate law enforcement effort, it has also been widely criticized for its excessiveness and its threat to established notions about privacy rights and civil liberties. Many argue that both the internments during

World War II and the war on drugs embody an overreaction to fearful and destabilizing events, as opportunistic politicians excite public fears and outbid one another in escalating both the mechanisms of enforcement and the penalties imposed. There is a legitimate need for the government to be alert to real threats to the domestic security of the United States. The September 11, 2001, terrorist attacks reveal this very real threat better than any other event. Much of the modern history of the domestic security state, however, is replete with instances in which the national government overreacted to perceived threats. This chapter reviews these instances to highlight the continuing tensions between government power and individual liberties.

For example, the FBI, the nation's top law enforcement agency, has always been concerned with law enforcement activities. It has grabbed headlines by nabbing gangsters during the Great Depression, or by dealing with spies, white-collar criminals, and organized crime—all legitimate targets. But enforcing the explicit provisions of law all too quickly became a sideshow to the main event of political surveillance. J. Edgar Hoover, the man who dominated the FBI for fifty years, denied for decades that organized crime—"the Mafia"—existed at all until, under pressure, he was forced to act in the late 1950s and early 1960s. By the early 1960s, the FBI had one agent investigating organized crime for every hundred agents investigating supposed political subversives. Even by 1975—at a time when the domestic communist movement was especially moribund, much of the energy from the period of 1960s activism was exhausted, and the FBI was under fire for abuses in how it gathered intelligence and used what it found—the FBI investigated 1,100 organizations for communist connections, spending twice as much for this purpose as they did for dealing with organized crime.[5]

World War I and the Origins of the National Surveillance State

Policing has traditionally been the prime responsibility of state and local authorities. World War I, however, led to a permanent increase in national policing responsibilities. With the war, various government agencies gained new or broader authority over such matters as espionage, sedition, sabotage, and immigration. For the most part, enforcement of new wartime laws focused on those who disagreed outwardly with that war, or those whose behavior was seen by national authorities as interfering with the war effort. (Advocating resistance to the draft and wartime labor activism are two main examples.) The key agencies responsible for the enforcement of these laws were the Department of Justice's Bureau of Investigation (soon to become the Federal Bureau of Investigation) and the US Army's Military Intelligence Division.

World War I, unlike World War II, was never almost universally accepted as a necessary and "good" war, since a broad array of Americans engaged in antiwar activities. President Woodrow Wilson made his intolerance for critics clear, viewing dissent as disloyalty. When the United States did enter the war, new laws empowered national authorities to aggressively target dissenters. Those who challenged the push to war included those whose loyalty was easily challenged, including recent immigrants and "hyphenates," especially German-Americans and Irish-Americans. Native-born critics included respected pacifists and antimilitarists who were part of the Progressive Movement (to which President Wilson avowedly belonged), but also included members of a growing Socialist Party and a new popular labor organization, the Industrial Workers of the World (the IWW, or "Wobblies"), groups that were easily demonized.[6]

Wilson described the clampdown on dissent as a temporary expedient and a wartime necessity. Many Americans supported him in this campaign, because of growing wartime fears fanned by government officials themselves. In addition, the idea of basic civil and political liberties, in the sense of a basic right to protections from excessive governmental interference when attempting to influence political affairs*—including due process, freedom of the press, and freedom of speech and association in criticizing government policy—did not yet have the currency it has today. Civil and political liberties were thought of as something a citizen earned over time, as that person gained property and respectability. At that time, many Americans viewed recent immigrants, anarchists, socialists, labor militants, pacifists, and others like them as undeserving of the rights guaranteed by the Constitution. No precise legal doctrines existed that institutionalized this limited view of civil and political liberties. Only a limited number of Americans held that the nation's ideals and its Constitution *did* require protections of individual liberties in the face of governmental authority, and a few of them at the time formed the Civil Liberties Bureau, the forerunner to the American Civil Liberties Union. But a lack of legal precedents favored authorities who clamped down hard on wartime dissent. Domestic fears about foreign influences undermining the war effort produced an environment that was very hospitable to the growth of a domestic security apparatus designed to intimidate and harass dissenters. Still, the excessive use of government power to limit the freedoms of speech and association spawned a backlash of sorts

* Usually civil and political liberties are considered separately, but they were lumped together in most cases during World War I. The civil liberties issue (that individuals be free from improper government action) got mixed up during the war with the political liberties issue (that individuals have specific rights, enabling them to act politically), because government used its power to limit and disrupt political dissent.

that began the process of carving out a broader area of protection for individual free speech and association.[7]

In April 1917, President Wilson spearheaded the wartime domestic offensive against dissenters by stipulating new rules for enemy aliens, restricting their movements and prohibiting them from criticizing the government or the armed forces. He then imposed a strict loyalty and security program through a secret executive order that authorized heads of agencies to remove employees who were seen as security risks. Congress followed up on these presidential acts with legislation like the 1917 Espionage Act, which was used not to punish actual spying, but criticisms of the government, including "individual casual or impulsive disloyal utterance." This act was later amended (through a Sedition Act) to more explicitly outlaw any type of criticism of the government or the armed forces. Under these two laws, over 1,000 individuals, including Eugene V. Debs, the Socialist presidential contender, were sentenced to prison terms of up to twenty years for criticizing their government. In one illustrative example, Rose Pastor Stokes was sentenced to ten years in prison for declaring, "I am for the people, and the government is for the profiteers." The two laws also empowered the postmaster general to censor the nation's mail and radio broadcasts of any publication or program deemed to be disloyal. A final piece of legislation was the 1918 Immigration Act, which criminalized anarchist views, whether detrimental to the war effort or not, and provided for the deportation of aliens who espoused anarchist ideas, as well as of naturalized US citizens if it could be shown that they had believed in anarchism before they became citizens. As one scholar notes, "For the first time a national policy of deliberate and massive mind control was adopted," enacted through a new and growing domestic security apparatus.[8]

To enforce these legal provisions, the national government built the institutional basis for a national domestic security state. The Department of Justice is a key national department concerned, as its title makes clear, with the administration of justice. The Federal Bureau of Investigation exists within that Department and is under the authority of the US attorney general, who heads up the department itself. The FBI (called simply the Bureau of Investigation until 1935) became a key agency in the enforcement of the new World War I laws, and bureau officials used the momentum of their agency's wartime role to turn it into the nation's premier law enforcement agency. The FBI began its life in 1908 but it remained a rather small organization, with limited jurisdiction, until receiving expanded duties during World War I. Empowered to enforce the new laws dealing with sedition, espionage, sabotage, and draft violations, the bureau expanded from 100 to 300 agents and turned from its criminal and antitrust investigations to investigations of political subversives. The army also got involved in monitoring and clamping down on dissent. It operated openly

to break strikes and enforce labor peace, but it also developed covert operations through two newly established agencies, the Corps of Intelligence Police and a centralized Military Intelligence Division, to monitor troop dissatisfaction and domestic civilian dissent. When the war ended, the army continued to focus on domestic issues, interpreting postwar labor unrest as subversive activity.[9]

The nation had a difficult time getting back to a peacetime footing after the war ended in November 1918, as the Russian Revolution and postwar labor troubles created new worries about domestic subversive activities. By May and June 1919, the nation was consumed by renewed fears, following a series of bomb scares and coordinated bomb attacks by unknown assailants in eight cities. The resulting "Red Scare" spawned an aggressive governmental response that gained renown for its excesses. When a bomb exploded outside the home of US Attorney General A. Mitchell Palmer, a worried Congress passed a special appropriation to fight the bombers. Palmer, in turn, created a new position in the Department of Justice to focus on radical activities, and a new General Intelligence Division (GID, or Radical Division) within the Bureau of Investigation, headed by twenty-four-year-old J. Edgar Hoover.[10]

Hoover, who would lead the bureau for almost fifty years, quickly learned that he could gain influence and renown by exploiting anticommunist sentiment. He made a name for himself by his inflammatory and apocalyptic portrayal of an imminent radical threat to the United States, as well as through his organizational prowess, demonstrated most convincingly when, in a short period of time, he had organized an index-and-file system covering every report of radical activity from the bureau's field offices. During the time when the Bureau of Investigation was going on the offensive against radicals, the army's Military Intelligence Division (MID) was also active, having grown from a staff of four in April 1917 to a Washington, DC, staff of hundreds and a far greater field staff. What with postwar labor strikes, increasing anarchist activities, and bomb scares, the MID even drew up plans to put down an insurrection and stepped up its role in breaking strikes and in monitoring and disrupting the activities of radical groups.[11]

The growing postwar offensive against radicals of all stripes culminated in a series of raids planned by Hoover but referred to as the "Palmer Raids," named after their sponsor, Attorney General A. Mitchell Palmer. The goal was to round up suspected plotters against the United States and deport them. The first wave of raids, in November 1919, resulted in the deportation of over 200 anarchists and Soviet sympathizers a little over a month later. A later series of raids, in January 1920, resulted in the detention of up to 10,000 persons suspected of communist sympathies. Authorities carried out these raids without either warrants or respect for legal due process. Those who were grabbed were

held incommunicado and often subjected to harsh and brutal measures, without recourse to lawyers or bail until they implicated themselves. Hoover and others in the bureau essentially argued that the standard rights of the accused should be suspended in these cases, and that the secret, unsupported, and unchallenged testimony of unidentified informers should be enough to convict and deport suspects.[12]

These activities and demands went too far, even for Congress and a public put on edge by the "Red Scare." Upon review, the courts released most detainees en masse (though hundreds more found themselves deported). In 1924 a new attorney general, future US Supreme Court chief justice Harlan Fiske Stone, criticized the excessive reaction represented by the Palmer Raids, warning, "There is always the possibility that a secret police may become a menace to free government and free institutions . . . [so] it is important that its activities be strictly limited." Stone then specified that from that point on, "the Bureau of Investigation is not concerned with political or other opinions of individuals. It is concerned only with their conduct and then only with such conduct as is forbidden by the laws of the United States." He concluded, "When a police system passes beyond these limits, it is dangerous to the proper administration of justice and to human liberty, which it should be our first concern to cherish." Curiously enough, Stone found a convert to this view in J. Edgar Hoover, who now professed that the bureau had no business investigating the beliefs of various radical groups. Stone, in turn, made Hoover the acting director of the bureau (seven months later, Hoover gained the title of director, which he would not relinquish until his death in 1972).[13]

The Depression and the World War II Years

Despite his seeming concern for dissenters, Hoover found his way back into antisubversive activities during the 1930s. Hoover had gained immense notoriety during the Great Depression, when the bureau solved some high-profile criminal cases that secured for the agency—and Hoover—a folk-hero status and increased congressional support. But the attention paid to violent criminals (later formalized in the "FBI's Ten Most Wanted Fugitives" list, displayed in every post office) would prove to be a distraction from Hoover's prime concern, the political surveillance of subversives. Despite the earlier reforms and Attorney General Stone's admonition that the bureau remain focused on criminal investigations, by the mid-1930s, Hoover and the bureau were back in the intelligence-gathering and surveillance business.

In 1936, President Franklin D. Roosevelt responded to Hoover's alarmist report of a growing domestic communist threat by secretly granting new authority to what was now called the FBI. This authority was based on a 1916

law that allowed limited, noncriminal investigations related to foreign affairs. Roosevelt's request for "general intelligence information" was quickly construed by Hoover as a blank check, endorsing an earlier-style secret, broad-scale, open-ended investigation of suspected subversives. (The FBI gathered files on more than 10 million persons by the late 1930s.) With the approach of war, Hoover also revived the FBI's General Intelligence Section, which began to work extensively with the army's Military Intelligence Division and the navy's Office of Naval Intelligence. In 1939, the FBI also gained general oversight and control over expanding government-wide intelligence-gathering and surveillance activities. Hoover would thereafter refer to this public notice of FBI oversight as a "presidential directive" that granted him and his organization the authority to operate in the surveillance and intelligence-gathering spheres. The irony is that the FBI was placed in charge of expanding these operations in order to prevent what Attorney General Frank Murphy called a "witch hunt": "We will not act on the basis of hysteria. . . . Twenty years ago [during the "Red Scare"] inhuman and cruel things were done in the name of justice. . . . We do not want such things done today."[14]

With the approach of war, Hoover and the FBI gained secret temporary powers that accumulated and became entrenched during the war itself. Unlike the situation in World War I, Congress passed new laws before the United States entered the war, instigated by a series of fear-inspiring congressional hearings by what would become the House Un-American Activities Committee (HUAC). The anticommunist cause made great inroads through the efforts of HUAC's chairman, Representative Martin Dies (D-TX), and his like-minded colleague, J. Parnell Thomas (R-NJ). HUAC investigated supposed communist infiltration of the national government and labor unions, gaining national prominence in high-profile hearings that showcased devout enemies of Roosevelt's liberal reforms. With the international situation afire with talk of war, aggressive talk about a communist influence within Roosevelt's government sold newspapers and mobilized public opinion.[15]

HUAC's hearings led to new laws, including the 1940 Smith Act, which made it a federal crime to advocate the violent overthrow of the government, but was interpreted by the FBI to authorize investigating and prosecuting anyone who said anything against government policy in times of national emergency. Another law was the 1941 Voorhis Act, which required the identification and registration of subversive organizations having links to foreign governments. Since it could not be expected that such subversives would willingly expose themselves, it would be necessary for the FBI to ferret them out through new domestic surveillance and intelligence-gathering activities. War fears thus led to the FBI's "emergence as a political police force," able to investigate and

harass people solely on the basis of what should have been their constitutionally protected freedom of speech and associations.[16]

Under new presidential and congressional authority, the FBI reinstituted many of the practices that were abandoned after World War I because of criticisms about interference with civil liberties. Wiretaps, the use of informers, and a mail-opening program became standard means of operation. Hoover even set up—in the absence of any legal authority—a Custodial Detention List of supposed subversives who were to be confined in concentration camps in times of emergency. Hoover began to operate with few checks on his or his agency's authority. The Department of Justice left the FBI to its own devices. Even when the department did intervene, as it did when it found the Custodial Detention List to be illegal, Hoover merely renamed the program the Security Index, continuing to update it without letting on to his superiors. Those who criticized the FBI's methods and growing power were said by Hoover to be inspired by communists seeking to undermine the agency. Hoover also developed the tactic of investigating and compiling files about those who could harm him or the bureau. Hoover gained the trust of key congressional leaders—trust backed by the fear of what lay in Hoover's secret files and how he might use them. Any public accountability was lost as these leaders allowed Hoover's work to be reviewed only in closed sessions. As the FBI's activities were thus misted over in secrecy, what the public did hear was Hoover's carefully orchestrated public relations campaign that bathed the director and the bureau in the rosy glow of righteousness and fortitude. When the war arrived, wartime necessity only increased the FBI's powers. The bureau flourished, expanding from 353 agents in 1933 to 4,380 by 1945.[17]

The Internment of Japanese-Americans

The internment of Japanese-Americans during World War II has been described as "the most blatant mass violation of civil liberties in American history." In the wake of the December 7, 1941, Japanese attack on Pearl Harbor, suspicions grew about the loyalties and sympathies of Japanese-Americans. Unlike Italian- and German-Americans, Japanese-Americans represented a very small number of US citizens, and they were concentrated on America's West Coast. Prejudices against the Japanese-Americans were quickly exploited, with West Coast politicians demanding that drastic action be taken. The Department of Justice deferred to the military on the issue. General John L. Dewitt, head of the West Coast Defense Command, concluded simply and vulgarly: "A Jap's a Jap. . . . I don't want any of them." The War Department drew up an executive order authorizing the military to exclude specified persons from designated

military areas. The order was applied only to the West Coast and only against Japanese-Americans who, beginning in March 1942, were rounded up and herded into internment camps. Most lost their homes, farms, and personal possessions in the process. By September, more than 112,000 people had been placed in ten camps in seven western states on mostly Native American lands, camps that offered a "grim and debilitating incarceration." Only a few Americans protested this mistreatment, and the US Supreme Court, in a series of decisions that it would come to regret, upheld the internments on three separate occasions. Some minor monetary compensation was offered to internees at the end of World War II. And in 1988, Congress passed a bill that formally apologized for the internment and offered each surviving internee $20,000 in compensation.[18]

Institutionalizing the Domestic Security State Regime

In the postwar period, anticommunism became a red-hot focus for national politics. The rise of anticommunism began when President Truman exploited the issue to obtain congressional acquiescence to military and financial aid for Greece in 1947, and, in 1948, aid for Europe under the Marshall Plan (see chapter 5). Developments in the domestic security state reflected and paralleled those in the national security state. The 1947 National Security Act established a Central Intelligence Agency to develop intelligence-gathering about foreign adversaries, although the act specifically left the gathering of domestic intelligence to the FBI. (The act prohibited the CIA from domestic operations.) The FBI soon had its hands full, first with revelations about Soviet spying within some US government agencies during and after World War II, and then with Truman's Loyalty and Security program, institutionalized in 1947 and designed to expose supposed widespread communist infiltration of the national government. The FBI gained more notoriety and fame when agents broke some big cases involving Soviet spies, such as fingering Klaus Fuchs, a British scientist who worked on the atom bomb and had passed important materials to the Soviets. They also followed a convoluted trail in uncovering the spying activities of Julius Rosenberg, who was executed, along with his wife Ethel, in 1951, at the height of the postwar "Red Scare."[19]

But even the FBI's successes were followed by calls that the agency had gone too far. Important cases were lost as the judiciary threw out convictions, because of egregious violations of fundamental matters of due process. Investigative and prosecutorial excess marked the FBI's work, and it is clear now that Ethel Rosenberg was almost certainly innocent of the charges for which she was executed. Hoover rectified some of the problems in superficial ways that were designed to protect the FBI from outside critics, gaining congressional author-

ity to forgo warrants in espionage cases and placing any reports detailing illegal methods (including wiretaps, break-ins, or mail opening) in separate and secret FBI files, far from the prying eyes of judges, meddling members of Congress, or indignant defense attorneys.[20]

Truman was uncomfortable with Hoover and the methods employed in domestic spying—even worrying privately that "we want no Gestapo or Secret Police [and the] FBI is tending in that direction"—but he had let the anticommunist genie loose to achieve his legislative ends, and it came back to haunt him as the House Un-American Activities Committee, made permanent in 1945, drove the communist threat firmly into the nation's consciousness. The Senate joined in the hunt for subversives with a new Internal Security Subcommittee and a Permanent Investigations Subcommittee, which made headlines with an ongoing investigation of communist infiltration of the US government and private industry. President Truman himself helped the process along by exploiting the anticommunist issue when it suited him and by promoting, through his Executive Order 9835, a comprehensive loyalty program for all government employees. However uncomfortable Truman was with this program and with the anticommunist witch hunt spearheaded by Republicans, 500 government employees were dismissed for what was officially referred to as "questionable loyalty."[21]

As anticommunism gained new champions, like Senator Joseph McCarthy (R-WI), almost one-fifth of the labor force was subjected to some form of loyalty or security test. Millions of individuals were investigated; millions more were forced to sign loyalty oaths to the US government under a threat of expulsion from their jobs; millions were purged from unions; hundreds lost jobs and were blacklisted from further employment; and many were simply cowed into accepting the new direction in government policy, for fear of the consequences. Fear ruled the day. As the hearings, investigations, and increased surveillance powers spread, many were afraid that any form of dissent would and could be interpreted as subversive and anti-American.[22]

Hoover encouraged the fear of communists, feeding the information that became the basis for Senator McCarthy's sensationalist charges, testifying to Congress and rallying the public against the "Red Menace," despite his knowledge "that the threat was almost nonexistent or at least unprovable." Under Truman's Loyalty Program, the FBI gained new powers to investigate government employees, and in 1950, Truman reauthorized the bureau to investigate "subversive activities" in general. Congress also legislated procedures for the loyalty program, and they overrode Truman's 1950 veto of the Internal Security Act, otherwise known as the McCarran Act. (At this point, the Korean War increased pressures for antisubversive legislation.) The act required communists and communist-front organizations to register with the government,

and it gave congressional approval to the FBI's ongoing secret program of maintaining a list of persons to be detained in case of national emergency. In his veto message, Truman cautioned that the legislation "is so broad and vague in its terms as to endanger the freedoms of speech, press, and assembly protected by the First Amendment. . . . This kind of legislation is unnecessary, ineffective, and dangerous."[23]

The Eisenhower administration intensified the Employee Security Program, dismissing 1,500 government employees. In 1954, at the peak of the communist scare, Congress passed a Communist Control Act. This act came close to outlawing the Communist Party by stripping it of all "rights, privileges, and immunities," essentially making Communist Party membership a crime, and greatly expanding the provisions in the earlier McCarran Act by adding another category of groups, those designated communist-*infiltrated*, that would be subject to its provisions and penalties. After years of litigation, the McCarran Act's provision for the registration of all communists and communist fronts was found to be unconstitutional by the US Court of Appeals for the District of Columbia, and this ruling was essentially upheld by the US Supreme Court when, in 1964, they refused to review the decision.[24]

COMINFIL AND COINTELPRO

The FBI had already begun investigating communist-infiltrated groups under its COMINFIL (short for communist-infiltrated, versus communist or communist fronts) program, and these broader investigations grew during the 1950s, as governmental repression greatly reduced the influence of the US Communist Party. As the perception of a communist threat declined somewhat, the country as a whole stepped back from the "Red Scare," as witnessed by the Senate's censure of Senator McCarthy for finally having overreached in his search for communists by targeting officers in the US Army. The FBI grew concerned that the clear decline of the US Communist Party as the 1950s progressed would reduce support for their investigations. In response, the bureau greatly exaggerated the party's waning influence by seeking to implicate, as being communist-infiltrated, the civil rights movement of the 1950s and 1960s, the antiwar and student movements of the 1960s, and even the activities of organizations like the National Association for the Advancement of Colored People (NAACP), the American Civil Liberties Union (ACLU), and the American Friends Service Committee (run by the Quakers).[25]

COMINFIL investigations—considered "passive" or "pure" intelligence-gathering, because of their focus on amassing information—proved to be notoriously broad and inclusive, with the bureau relying on hugely "vague and sweeping" standards for what it considered to be "subversive." The FBI viewed

many kinds of dissent as subversive. With such a broadly self-defined mandate, the bureau's search for communists could be projected into just about every corner of American political life, although the investigations tended to focus on groups that challenged the status quo in any way. As an official 1955 report detailed, these investigations covered "the entire spectrum of the social and labor movement [*sic*] in the country."[26]

The FBI's activities, and those of many other national agencies concerned with supposed subversives, did not end with the "pure" investigation criticized later by the Senate. Much greater misuse of government power lay ahead. The COMINFIL investigations would provide a significant entrance point for the infamous COINTELPRO (short for counterintelligence program) activities, which began in 1956 and lasted until they formally ended in 1971 with public disclosure of these activities. COINTELPRO differed from COMINFIL in the FBI's use of aggressive covert methods to "disrupt" and "neutralize" subversive groups and individuals. In these actions, Senate investigators concluded that "the Bureau took the law into their own hands, conducting a sophisticated vigilante operation against [those targeted as] domestic enemies." The bureau acted on its own, and well beyond the law, in waging this secret war against those it labeled as subversives.[27]

As Senate investigators phrased it in 1976, "What happened to turn a law enforcement agency into a law violator?" The answer seems simple. When, in the mid-1950s, the US Supreme Court limited the FBI's ability to prosecute subversives under the Smith Act, the bureau, on its own authority, developed a series of covert operations designed to be kept secret from any outside interference. (The Senate reported that "no one outside the Bureau was supposed to know that COINTELPRO existed.") Hoover was encouraged by the fact that the US Supreme Court's restrictions were opposed by presidents, by many in Congress, and by a public made nervous and hostile to many forms of dissenting activity. The implicit consent of much of the government and the public, however, does nothing to mitigate the threat to fundamental constitutional guarantees. As the Senate concluded, "When the government goes beyond traditional law enforcement methods . . . and attacks group membership and advocacy, it treads on ground forbidden to it by the Constitution."[28]

The bureau's activities were designed to harass, intimidate, and instill fear. Agents were instructed to "enhance the paranoia epidemic" among target groups and "get the point across that there is an FBI agent behind every mailbox." Senate investigations found that COINTELPRO involved a wide range of possible activities, such as:

- spreading false information to discredit groups by creating fake fliers for events or fake literature that misrepresented a group's beliefs;

- mailing anonymous letters to spouses, employers, landlords, and family members containing information designed to break up marriages, get people fired or thrown out of their apartments, or simply embarrass and humiliate key individuals;
- interviewing activists as an intimidation tactic;
- interviewing employers and landlords to spread derogatory information about activists;
- sending letters or spreading rumors falsely targeting an individual as an informer for the government;
- planting false, derogatory, and distorted stories ("disinformation") through friendly media outlets;
- disseminating bureau-written literature through third parties, such as the American Legion and the Veterans of Foreign Wars;
- pressuring organizations like churches and universities to prevent certain people from speaking at organized events;
- recruiting prominent citizens to deliver bureau-scripted speeches denouncing various activist groups;
- notifying groups when one of their members was a suspected communist;
- notifying media outlets when a group knowingly harbored communists;
- infiltrating groups to disrupt planned protests;
- pressing state and local law enforcement authorities to take action against activists;
- encouraging selective law enforcement by targeting certain individuals;
- pressuring judges to take harsh action against certain individuals;
- asking the Internal Revenue Service to take aggressive action against targeted individuals;
- encouraging violence within and between groups by spreading false information;
- blackmailing individuals by threatening to divulge information gained through telephone taps and photographs of compromising situations; and
- burglarizing offices and homes to obtain information.

With regard to the last item on this list, Socialist Worker Party offices were broken into ninety-two times from 1960 to 1966, once every three weeks.

The FBI also maintained an "army of informers"—1,500 of them in the Communist Party by 1956, including the party's second-highest-ranking official—to help disrupt dissident activities and spread distrust within organizations. Most if not all of these activities represented violations of the constitutionally protected

political rights of freedom of speech, assembly, and association, since people were targeted for such activities.[29]

There were 2,370 bureau-approved counterintelligence actions, beginning in 1956, when Hoover authorized the first formal COINTELPRO efforts of destabilizing and harassing the Communist Party (CP). (Ad hoc actions had been ongoing for decades.) These efforts proved to be so successful in eliminating the party as an operating entity that the FBI expanded the program in 1960 to include organizations that were suspected of being communist-infiltrated. (COMINFIL thus served to keep the bureau in the counterintelligence business, as all sorts of suspected links could be tapped as evidence of the need for bureau action.) In 1961, the FBI targeted the Socialist Workers Party (SWP), a leftist party, but one that had been at odds with the CP for decades. Both the CP and SWP were avowedly radical, yet they still were legitimate parties, protected by the constitutional guarantees of freedom of speech and assembly. "White hate groups," including the Ku Klux Klan (KKK) and the American Nazi Party, were targeted in 1964, followed by "black nationalist hate groups" in 1967, and the "New Left" in 1968. Senate investigators, however, found that the FBI "very precisely targeted" individual "white hate groups" like the KKK, while the other programs spread out from the original targets to include a broad array of groups and individuals. For example, the "black nationalist hate groups" program emerged in response to the 1967 summer riots. While ostensibly focused on groups that threatened violence, the bureau soon directed its efforts against a cross-section of the civil rights movement—Martin Luther King's Southern Christian Leadership Conference, the Congress of Racial Equality (CORE), and the Student Nonviolent Coordinating Committee (SNCC)—all groups that practiced nonviolence. The FBI essentially targeted the civil rights movement itself, as a threat to the domestic security of the United States. As the "Old Left" communists faded as a potential target, the "New Left" emerged in opposition to the Vietnam War and provided a large, amorphous target for the FBI. Bureau headquarters urged a "comprehensive study of the whole movement." Even the women's liberation movement was included for investigation and possible disruption, based on the idea that the movement's activities "might lead to demonstrations and violence."[30]

OTHER AGENCIES

The FBI's actions were not the only ones in the war against domestic dissent in the 1960s. A quick review must suffice to gain an awareness of the efforts of other agencies. First, the CIA. Although this agency is prohibited by its charter from domestic spying, in 1967, President Johnson pressed the CIA to investigate foreign links to domestic unrest, which meant spying on American citizens

and on organizations in the United States. Under Operation CHAOS, the code name for the program, the agency spied on over 7,000 citizens and 1,000 organizations, compiling some 10,000 files on American citizens and indexing the names of 300,000 others in CIA computers. Antiwar activists who traveled abroad had their rooms burglarized and their telephones tapped and bugged. When, as a result of their investigations, the CIA reported to Johnson that no ties between the student protest movements and foreign governments could be found, Johnson, and later Nixon, pressed the agency to commit more resources to the investigations, arguing that the CIA must not have tried hard enough.[31]

These actions supplemented the ongoing mail-opening program—recognized by agency personnel as illegal—that the CIA had been running since it was formed. The CIA and FBI together operated twelve mail-opening programs from 1940 to 1973. The largest CIA mail-opening program (HTLINGUAL), run out of New York City, reviewed 28,519,414 letters, opening more than 215,000 from 1952 to 1972. Project MERRIMAC, "an extreme deviation into lawlessness," sent agents to infiltrate activist organizations, in order to determine when and where protests would be held and gather information about members. One group, Women Strike for Peace, was infiltrated because they espoused nuclear disarmament and an end to the arms race with the Soviets, leading the CIA to suspect them of promoting "Moscow's aims."[32]

The National Security Agency (NSA)—"the most secretive, lavishly funded,[†] and largest of all agencies in the intelligence community"—was another agency that cooperated with the FBI and CIA in the fight against 1960s activism. Few Americans then even knew this agency existed. It was not created by a congressional act, but rather by an executive order in 1952. Its mission was (and still is) to secure and protect US government communications through code-breaking, electronic intelligence gathering, and, most importantly for our purposes in this chapter, communications surveillance. It is this latter power that authorizes the NSA to intercept all communications that involve electronic signals (including phone calls and telegraph messages). The NSA, like the CIA, is only supposed to investigate foreign threats. But it has interpreted its mission to obtain information from "foreign" communications to intercept communications if either the sender or receiver is in the United States. Through its Operation SHAMROCK and its later Project MINIRET, the NSA gained access to international cables (illegal in peacetime under the 1934 Communications Act) and listened in on radio and phone conversations without ever having warrants to do so (which is

[†] The NSA was funded at $4 billion a year through the 1970s. By comparison, in 1978, the national government funded 725,000 temporary public-service jobs at a cost of $4.5 billion.

required under the Fourth Amendment). The NSA's Office of Security maintained files on 75,000 American citizens through 1972 (these were destroyed in 1974, when congressional investigators began to ask questions about the projects). As we now know, the NSA, in the wake of the 9/11 attacks, collected information about every American's phone calls and emails.[33]

The US Army also mobilized a huge offensive against domestic dissent during the 1960s. The army began to increase its intelligence-gathering operations within the United States in the early 1960s, focusing on civilian political activities where Army officials believed civil disorder was possible. These operations became enormously expansive as the decade progressed. By the late 1960s, the army had developed a national network of over 350 posts, staffed by over 1,500 undercover agents organized into seven Military Intelligence Groups. A major turning point came after the 1967 riots in Detroit, when the army's chief of staff accepted recommendations for the creation of "continuous counterintelligence investigations" of "subversive personalities, groups, or organizations." The army specifically targeted the civil rights movements and the anti-Vietnam/antidraft movements, and it then extended this broad authorization to those who were "friendly" to these movements. Even established, nonviolent groups like the NAACP and the Quakers became subjects for army surveillance, demonstrating that any group was a target, not just those that displayed a propensity for violence. As a US House of Representatives committee reported later, by 1968, the Army's Counter-Intelligence Analysis Branch had assigned more personnel to monitor domestic disturbances and dissent than those working on "matters of counter-intelligence . . . [in] any other area of the world, including Southeast Asia [i.e., Vietnam and surrounding nations]." Army agents even spied on Martin Luther King's funeral.[34]

Lastly, we come to the Internal Revenue Service. From the late 1940s through the 1960s, the IRS went after leftist groups that were ostensibly communist-dominated or infiltrated by denying them the tax-exempt status granted to other political groups, as well as by initiating investigations and audits against individuals and groups espousing unpopular ideas. In 1969, the new Nixon administration aggressively pressured the IRS to use its powers against the administration's domestic enemies, including a broad spectrum of political groups from mainstream policy institutions and grants-making organizations to civil rights and New Left groups. Some members of Congress, particularly southern members antagonistic to the civil rights and antiwar movements, had also been pressing the IRS to use its powers against dissenting groups. In response to these pressures, the IRS formed an internal secret Special Service Staff (SSS) to institutionalize and broaden its previously sporadic hounding of certain groups and individuals (41% of these targets were black or other minority groups, and 29% were antiwar or New Left groups). The SSS—"an

institutional strike force against political dissent"—worked closely with the FBI to target groups and individuals for investigation and enforcement action. By 1973, the SSS had selectively investigated 8,585 individuals and 2,873 organizations. Such activities were far removed from the IRS's mission of tax collection and the enforcement of tax laws. When *Time* magazine published a story about the SSS in August 1973, the commissioner of the IRS abolished that organization, saying that "political or social views . . . are irrelevant to taxation."[35]

The civil rights and antiwar movements of the 1960s are often accorded a key place in the modern history of the United States, as examples of the way ordinary citizens can affect the very direction the nation takes. Many of those who ran the US government, however, interpreted these protest movements as subversive and dangerous. The government's myriad attempts to limit the expression of dissenting opinions during a tumultuous decade amounted to extreme overkill. And critics noted that the legitimate law enforcement and counterintelligence goals of the national government were undermined as agencies cast as wide a net as possible among dissenters and activists. It was difficult to focus in on real crime and wrongdoing when suspicions and law enforcement efforts ranged so broadly.

THE FBI AND MARTIN LUTHER KING JR.

Martin Luther King Jr. was marked for special surveillance as part of COMINFIL in 1962, after having been under investigation since a 1957 Washington, DC, speech. His every move was followed by the FBI. Agents tapped his telephones (both home and office) and those of his close associates, and they used hidden microphones to bug almost every hotel room he stayed in. (They knew of his travel plans from the tapped phones.) It seems as though King's greatest crime, in Hoover's eyes, was having criticized the FBI for acting in sympathy with racist southern whites. For his temerity and growing influence, and because two of his close advisors had once been communists, King was also placed on the bureau's Reserve Index and listed as a "communist," a place that guaranteed that King would be rounded up and detained during any national emergency. After a year of intense surveillance, one of Hoover's agents, Joseph Sullivan, reported back to the director that King was not a threat to US domestic security, and that communists had not infiltrated the civil rights movement. Hoover's outraged response forced Sullivan to backtrack quickly. He wrote a new memo, reporting, "The director is correct. . . . We must mark [King] now . . . as the most dangerous Negro of the future."[36]

King was then treated to COINTELPRO methods. When Marquette University made it known that they would bestow an honorary degree on King,

FBI agents contacted university officials with information about King's private life (particularly his sex life) and "communistic connections." The university then dropped the invitation. The bureau even unsuccessfully attempted to prevent King's scheduled audience with the Pope. They enlisted the IRS to investigate King and his financial supporters. And they repeatedly tried to plant false and derogatory stories in friendly media sources. Hoover himself publicly called King "one of the lowest characters in the country." When Congress first considered making King's birthday a national holiday, FBI agents continued to brief members of Congress about King's private life.[37]

THE POST-HOOVER FBI

The bureau's COINTELPRO and COMINFIL efforts were formally ended in 1971, when an anonymous group calling themselves the "Citizens Committee to Investigate the FBI" turned the tables by burglarizing an FBI office in Pennsylvania and releasing documents they had stolen to the press. In the face of the ensuing press coverage, the FBI decided to end the programs. The Watergate scandal also helped dislodge much of the legitimacy of the ongoing domestic surveillance and intimidation programs of the FBI, the CIA, and the army's intelligence division. The congressional investigations that followed led to pointed charges about the damage done to the democratic process in the United States by the overzealous and illegal use of governmental powers. While the covert war against political dissent did not end with the exposure of the controversial methods used during the 1950s and 1960s, the resulting congressional and public outrage about these methods greatly reduced their use, at least for a time. Another domestic offensive, however, the war on drugs, emerged to take the place of the war against political dissent.[38]

Granting the FBI concurrent jurisdiction with the Drug Enforcement Administration (DEA) to fight the drug war was one step in turning the bureau toward law enforcement and away from surveillance activities. The shift had begun with the exposures of FBI misdeeds in the mid-1970s, including the fact that J. Edgar Hoover's successor, Patrick Gray III, had become involved in the Watergate cover-up. When President Carter appointed William H. Webster, a US District Court judge (and thus a true outsider), as the FBI's director in February 1978, the real post-Hoover era began for the bureau. Webster professionalized the bureau's headquarters, demanded by-the-book operations, and recruited women and minorities, both of whom Hoover had shunned as agents. Webster turned the FBI's attention to political corruption, white-collar crime, an aggressive campaign against the Mafia, and international drug traffickers. The bureau also refocused its attention on espionage, helping to successfully convict seventy-five spies operating within the national government.

But the FBI did not completely shed its surveillance past, as the investigations of the Committee in Solidarity with the People of El Salvador (CISPES) demonstrated. Targeted as a threat by the Reagan administration, CISPES was a group engaged in an array of legal and peaceful activities protesting Reagan's policies in Central America. After less than a decade of restraint, the bureau revived its counterintelligence activities, investigating 2,375 individuals involved in domestic dissent from 1981 to 1985, and using the 1978 Foreign Intelligence Surveillance Act to investigate over 1,300 progressive political and religious groups linked to CISPES. The FBI also resurrected other old tactics in 2003, when agents began collecting information about anti–Iraq War protestors. Although Hoover-era abuses led to tight restrictions on FBI investigations of political activities, Attorney General John Ashcroft relaxed these restrictions in the wake of the September 11, 2001, terrorist attacks. The FBI has asserted such investigations are aimed at "extremists . . . plotting violence," while critics have worried that "the monitoring program could signal a return to the abuses of the 1960s and 1970s."[39]

The Drug War

THE NIXON ADMINISTRATION

What has been called "America's longest war"—the drug war—was declared by Richard Nixon as he campaigned in 1968, to contrast his tough "law and order" goals with Lyndon Johnson's War on Poverty. Once in office, Nixon proclaimed that drug abuse had outgrown the capabilities of local law enforcers; it was now "a serious national threat." Drug use had risen during the preceding decade, but there was no evidence of a national drug epidemic. Still, Nixon and his allies in Congress played up the danger, fanning public fears in ways similar to the earlier anticommunist crusade.[40] This approach paid off. In 1970, Congress passed the Comprehensive Drug Abuse Prevention and Control Act, which mixed funding for treatment with new, harsher methods of law enforcement.[41]

The beginnings of the drug war—particularly the emergence of new antidrug agencies—under the Nixon administration also became mired in activities that ended in scandal for Nixon. Creation of the Drug Enforcement Administration (DEA) in 1973 was merely the last in a series of steps to get the drug war off the ground. The men Nixon placed in charge of antidrug efforts turned out to be many of the same men who became the infamous "plumbers," the secret force Nixon deployed to disrupt his political enemies (and who became famous for the Watergate break-in that led to Nixon's downfall). Nixon sent the plan that created the DEA to Congress with a message declaring "an all-out global war on the drug menace"—neatly and overtly linking

the goals of drug enforcement and national security. The DEA was proposed as a superagency within the Department of Justice to provide momentum and a focal point for the drug war, as well as to deal with the competition and lack of coordination between the various agencies responsible for the war on drugs. Nixon's plan also brought the FBI into the drug war by requiring the DEA to draw on the FBI's experience in fighting organized crime. The immediate results of this new domestic "war" proved to be a failure, as the DEA became susceptible to charges of corruption and abuse (illegal break-ins, the planting of evidence, entrapment, and harassment by agents). The rest of the decade, under the administrations of Presidents Ford and Carter, represented a breather from the domestic security overreach of the preceding decades, as congressional investigations of the unconstitutional actions reviewed here put many agencies on the defensive. The creation of the DEA was important, however, because it created institutional momentum for a continuing drug war.[42]

REAGAN, BUSH, AND THEREAFTER

Ronald Reagan began his presidency with a call for total drug abstinence (highlighted by First Lady Nancy Reagan's campaign to "Just Say No" to drugs). In 1982, he declared a new war on drugs, which would involve a variety of federal agencies and also, for the first time, the Department of Defense, to monitor drug shipments. In addition, the FBI was brought directly into the drug war by gaining concurrent jurisdiction with the DEA over narcotics violations. Expenditures were increased as the DEA budget doubled between 1981 and 1986 (and then doubled again between 1986 and 1992, as President Bush declared another war on drugs). An important part of the drug offensive was the creation of the South Florida Task Force, involving personnel from the Department of Justice, the DEA, the Bureau of Customs, the FBI, the Bureau of Alcohol Tobacco and Firearms (ATF), the IRS, and the US Marshals Service, all placed under the direction of Vice President George H. W. Bush. In late 1982, Reagan announced the creation of an additional twelve regional task forces in other parts of the country. Despite all these efforts, drugs actually became more plentiful by 1984, as pointed out by a General Accounting Office study. At this point, Reagan announced an enforcement shift from suppliers to users, in a policy of "zero tolerance." What this meant was increased arrests of marijuana users, for the most part, since by 1982, this drug accounted for 72 percent of all drug arrests.[43]

Reagan's rhetoric had grabbed the public's attention, and public opinion responded. In addition, reacting to election-year pressures, in 1984 Congress passed a Comprehensive Crime Control Act that allowed preventive detention, established mandatory minimum sentences, increased maximum fines, and set

new standards for forfeitures of homes and other assets where drugs are found. New mandatory sentencing resulted in the beginnings of an explosion in the US prison population.[44]

In 1986, the drug abuse issue gained enormous media exposure when Len Bias, the first-round draft choice of the Boston Celtics, died of a cocaine overdose. The emergence of "crack," a cheap, smokeable form of cocaine that may have been the cause of Bias's death, added to the controversy. Because 1986 was another election year, politicians again rushed to exploit the issue. President Reagan and Vice President George H. W. Bush both submitted urine for drug testing, and Reagan requested that members of his senior staff do likewise. The president then signed an executive order requiring all federal employees to undergo drug testing, leading conservative columnist William Safire to respond, "The Reagan administration is undermining . . . the most basic rights guaranteed by the Founders." The issue of drug abuse came to dominate media attention, with lurid stories referring to the drug "epidemic" as a "plague." Congress rushed through a new law, the Anti–Drug Abuse Act in October 1986, just in time for the 1986 midterm elections. More money was promised to fight the drug war, although after the election, $1 billion was cut from the proposed new drug-war spending, including the entire budget for new treatment programs. The new law also increased penalties yet again. The law instituted mandatory minimum sentences for the simple possession of drugs, a doubling of penalties for knowingly involving juveniles in drug activity, and mandatory life sentences for drug kingpins. Further growth in the prison population followed, especially since many states followed suit with their own mandatory minimum sentences for drug offenses.[45]

THE EXPLOSION IN INCARCERATION

Laws passed in 1984, 1986, 1988, and 1994 provided progressively steeper penalties for drug-related crimes. The 1986 Anti–Drug Abuse Act instituted five-year mandatory minimum sentences for possession of 100 grams of heroin and 500 grams of powder cocaine, as well as for just 5 grams of crack. The impact of this disparity fell predominantly on African-Americans, who were arrested for crack possession in much greater numbers than whites, who tended to be arrested for possession of powder cocaine. As Christian Parenti reports, in 1980, blacks, who constituted 12 percent of the overall US population, made up over 23 percent of those arrested on drug charges. By 1990, blacks, still forming 12 percent of the population, accounted for 40 percent of all drug busts and 60 percent of all drug convictions.[46]

In general, harsher sentencing laws dramatically increased the federal and state prison population in America. In 1985, some 800,000 people were ar-

rested on drug charges; by 1989 the number rose to 1.4 million. By 1998, 58 percent of all federal prisoners were incarcerated for drug offenses. This works out to 668 inmates for every 100,000 residents. In comparison, for China and Canada the number was 111 inmates; only Russia has a larger rate of incarceration than the United States. Since 1980, while the number of inmates convicted of violent crimes has doubled, the number of drug offenders in prison has increased sevenfold. By mid-2003, 1 million people were serving time for nonviolent (mostly drug) offenses, at an annual cost of about $9.4 billion.[47]

As James Gray, a former federal prosecutor and a California Superior Court judge until 2009, observed in 2001, "We have been trying to incarcerate our way out of the drug problem." Gray reported that "someone is arrested for a marijuana offense somewhere in the United States every forty-five seconds!" Gray also noted the disparity between the government's approach to controlled substances (drugs) and its approach to alcohol and, especially, tobacco, considering that annual alcohol deaths in the late 1980s reached 45,400 (23,000 directly, and 22,400 in alcohol-related highway deaths) while tobacco was a confirmed killer of over 400,000 annually. By contrast, cocaine killed 3,308 people a year, while heroin and other opiates killed 2,743, and no deaths from marijuana alone have ever been recorded.[48]

In 1988, another election loomed, and both parties again strongly pursued the drug issue. Congress passed another omnibus Anti–Drug Abuse Act, which increased funding once more. Penalties also increased, as users found with even nominal amounts of drugs would be subject to steep civil fines and the forfeiture of their cars, boats, or anything else in which drugs were found. The new forfeiture rules made it possible for federal, state, and local law enforcement agencies to seize homes, cars, and cash from persons not even convicted of crimes. Prison sentences that were steeper still were authorized, including life in prison for three-time drug offenders, and the death penalty for certain crimes committed by major drug traffickers. As one scholar notes, since penalties had already been increased in 1984 and 1986, "the search for greater penalties reached the point of absurdity." Horror stories abound, both from long sentences for minor offenses, to home and auto forfeitures for small quantities of marijuana, to police stops and forcible home invasions based merely on the hunch that someone was involved in a drug crime.[49]

The 1988 law also increased the military's role in drug interdiction, intended to halt the flow of drugs from outside the United States. It was the George H. W. Bush administration that ordered the military into the war, as part of President Bush's having raised the stakes by making the drug war one of his top priorities. Bush had made the drug issue the focus of his inaugural address. In his initial major policy address, he appointed the first drug czar, William

Bennett, and committed much more money to the fight against drugs, raising annual spending for it by 68 percent, to $10.6 billion by 1990. President Reagan had laid the basis for bringing the military into the fight when, in 1986, he signed a national security directive that portrayed drug trafficking as a "threat to the national security of the United States." Military leaders hesitated to join such a war, however, arguing that it was primarily a domestic law enforcement issue that would detract from traditional military missions. Only after years of intense congressional pressure did the military, under orders from the Bush administration, join the fray. The military used navy ships and search planes in the Caribbean; the marines, the army's Special Forces, and National Guard units along the US-Mexico border; and navy SEALs along the Gulf Coast. American military forces also intervened throughout Latin America (especially in Colombia, Bolivia, and Peru) to train police and military units in drug eradication and control. The United States even went to war when military forces attacked Panama, capturing Panamanian president Manuel Noriega for violating US drug laws.[50]

Scholars and critics began to speak out against the drug war as the Bush war rhetoric escalated. Enforcement efforts had little effect on the supply of drugs; prices remained constant or even dropped as enforcement activities increased. But the agencies involved in the drug war, similar to any bureaucracy, have a clear interest in continuing to wage this war in the way that generates the most funding for what they now do. The "criminalized approach" that labels drug abuse as a criminal act instead of a health issue also made it more difficult to obtain full funding for drug treatment programs that have been proven to be so effective elsewhere.[51]

Critics also began assailing what was portrayed as a broad assault on civil liberties and privacy rights, as politicians pressed for ever greater law enforcement powers and more extravagant penalties. These critics included many judges, who had witnessed the effects of the new laws firsthand. As former judge James Gray has reported, "The war on drugs has resulted in the loss of more civil liberties protections than has any other phenomenon in our history." He notes that the high profitability associated with the drug trade led to the growth and growing sophistication of large-scale criminal organizations, as well as to the failure of law enforcement attempts to keep up. This has produced increasing calls for ever more powerful law enforcement powers and even greater penalties. The combination of hype and fear sown by politicians has understandably convinced many Americans that some surrender of basic liberties is a small price to pay for confronting illegal drugs.[52]

Judges, too, are under great pressure and have allowed incremental changes that, over time, have eroded constitutionally guaranteed civil liberties—the protections citizens have against excessive government authority. The Fourth

Amendment rights to be free from unreasonable searches and seizures have been slowly altered, and law enforcement officers now have much freer rein and can reasonably expect that courts will uphold most searches, regardless of the circumstances. Under the new forfeiture laws, seizures of property can be made before any conviction—or even an indictment—for a drug-related crime. Even if found not guilty, people are unlikely to get their cash, cars, or other assets returned, since the standard of guilt is much lower for forfeitures than for convictions. It is estimated that up to 80 percent of those whose property is seized are never even charged with a crime. The possibilities for abuse are greatly heightened, since law enforcement agencies can profit from these seizures by keeping what they confiscate, whether it be property, cash, cars, boats, jewelry, or other valuable items.[53]

During the George H. W. Bush years, Democrats had begun to criticize the focus on law enforcement to the exclusion of treatment and education programs, but Democratic president Bill Clinton did nothing to reduce the war on drugs. Despite having admitted to experimenting with marijuana, Clinton made it clear that the harsh enforcement and militarization of the drug war would continue. Another election-year crime bill, the 1994 Violent Crime Control and Law Enforcement Act, dramatically increased grants to states for more police and prisons, and raised penalties yet again, including the definition of a number of new crimes to be punishable by the death penalty. In 1994, Clinton also issued a National Interdiction Command and Control Plan, which created a new kind of entity within the national government, merging the strategic intelligence-gathering resources of the CIA, the Defense Intelligence Agency, the National Reconnaissance Office, the National Security Agency, and the National Imagery and Mapping Agency with the human intelligence-gathering resources of the FBI, the DEA, the Customs Bureau, and the Immigration and Naturalization Service. In 1998, the Higher Education Act denied federal educational benefits to any person convicted of marijuana possession. (No such penalty exists for the crimes of rape, robbery, or manslaughter.)[54]

Marijuana arrests increased dramatically under the Clinton administration, and they reached three-quarters of a million annually, mostly for simple possession. As a *New York Times* report noted in 2003: "More people are in prison for marijuana crimes today than ever before. Dozens, if not hundreds, are serving life sentences for nonviolent pot offenses." The report concluded that with both political parties joining in the assault on marijuana just as middle-class use of the drug was in decline, "it is largely poor people and minority offenders who are imprisoned for marijuana offenses. Pot smokers can lose their cars, houses, jobs, student loans, and food stamps after getting busted." The George W. Bush administration appointed a drug czar, John Walters, who encouraged state prosecutors to move aggressively against the spread

of medical marijuana providers. The Obama administration, after years of dithering, finally agreed to a recent congressional law to stop federal agents from raiding and prosecuting such establishments. And it seems that change may finally be in the air. Congress passed the 2010 Fair Sentencing Act to reduce the dramatic disparity in penalties for crack versus powder cocaine (from a ratio of 100:1 to 18:1). As of 2016, a Sentencing Reform and Corrections Act has been making its way through Congress. Its passage would modestly reduce the number of drug offenders serving very long sentences (half of the federal prisoners are drug offenders, and drug-related prison sentences have doubled between 1988 and 2012). President Obama used his last year in office to commute the sentences of hundreds of nonviolent drug offenders, and the Department of Justice has announced that it would begin phasing out the use of private prisons, built to house the explosion of drug offenders.[55]

The Aftermath of the September 11 Attacks

THE PATRIOT ACT AND NEW SECURITY MEASURES

Six weeks after the devastating terrorist attacks of September 11, 2001, Congress rushed the USA PATRIOT Act into law (the title is an acronym for "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism"). The act greatly expands the surveillance and investigative powers of national law enforcement agencies, allowing them broad access to private communications and personal information in ways previously rejected by the Congress. Highlights of the law include:

- increased discretionary authority for the FBI, by reducing judicial checks on investigations;
- "sneak and peek" searches (the ability to search homes without prior notice to the owner);
- unlimited power to obtain business records (including medical, library, university, and bookstore records) using a secret court order, without having to show probable cause;
- a new, broad definition of terrorism, and the power to unilaterally define any group as a terrorist organization;
- increased Internet surveillance, including the monitoring of emails and web surfing;
- increased secrecy for FBI domestic intelligence-gathering investigations;
- an expanded electronic surveillance authority, including easier "roving" wiretaps (tapping any phone used by a person, instead of tapping one particular phone) authority;

- an expanded detention authority and easier deportation of noncitizens; and
- the barring of foreign citizens based solely on their speech.

Much of the authority allowed under the new law already existed, but it was limited by judicial checks and formal procedures designed to protect Americans against abuses by the government. The new powers apply the much looser standard of foreign surveillance to domestic affairs, allowing the FBI and other agencies to use electronic surveillance and conduct searches even in the absence of any evidence of wrongdoing. For example, the government already had the power to order roving wiretaps, but agencies or officials had to convince a judge that they had probable cause to do so. Now these taps can be ordered secretly, simply on the authorization of the attorney general. This expanded surveillance authority also applies to Internet use, meaning that the government can install devices to collect information about every transaction a person makes (every page visited, every email sent and received, every search request, etc.). Because of the potential for abuse of the information thus gathered, the application of this authority previously required judicial and even congressional oversight, and this is precisely what the current law no longer has to follow. Critics—and there are many on both the Left and Right—say this effectively ignores the Fourth Amendment's bar to "unreasonable searches and seizures." In May 2002, Attorney General John Ashcroft also granted the FBI sweeping new powers to engage in domestic spying against political organizations, religious groups, and private citizens, directly overturning restrictions on FBI activities imposed in 1976 because of COINTELPRO and other abuses.[56]

Even those who welcome new powers to combat terrorism worry about the overbroad nature of the PATRIOT Act and the absence of effective judicial and congressional oversight. Critics also worry that Congress ignored very real intelligence-gathering and law enforcement failures in its rush to increase law enforcement authority. In many ways, the 9/11 attacks did not succeed because of not enough governmental surveillance authority, but because of leadership and bureaucratic failures. The information was there, and warnings had been made but not acted upon. In May 2002, FBI Director Robert Mueller himself acknowledged that the bureau had missed many warnings about the terrorist attacks. Despite the FBI's existing authority and large budget increases during the 1990s, the bureau never developed a coherent ability to investigate terror threats.

Others fear a return to the old days of guilt by association. Instead of holding individuals accountable for their actions, the law allows investigators to cast a wide net over groups and associations. And critics note that officials have used the act's surveillance authority to investigate and prosecute citizens

and noncitizens for low-level crimes, including theft and swindling, that have nothing to do with terrorism. The George W. Bush administration gave Congress little time to investigate and deliberate over the changes provided by the new law, and in response, Congress did impose a four-year sunset clause on many of the act's provisions (meaning that much of the law expired in 2005, although Congress renewed the bulk of its provisions in 2005, 2006, and, most recently, in 2010).[57]

The national government engaged in other actions that raised important issues in the clash between government authority and individual rights. The government detained over 1,200 individuals in the wake of the September 11 attacks, with many of them enduring harsh conditions. The first targets of anticommunism were immigrants (those detained and deported during and after World War I), and those being held in the wake of the 9/11 attacks were also primarily immigrants. Their identities were withheld, no charges were filed, their whereabouts remained secret, and they were treated harshly. The Department of Justice later acknowledged that a policy of "hold until cleared" was followed—essentially turning the justice system on its head by assuming the guilt of detainees until they were proven innocent. Secret hearings that barred the press and the public were used to deport many of those who were detained. As one law professor has complained, "Never in our history has the government engaged in such a blanket practice of secret incarceration." After a year, not a single detainee had been charged with involvement in the terrorist attacks, yet 400 remained in custody.[58]

The George W. Bush administration had also created what the *New York Times* calls a separate "shadow system" of justice that is removed from ordinary congressional and judicial oversight. The Bush administration refused to consider captured individuals as "prisoners of war," who were to be accorded the rights and protections of the Geneva Convention and international law. Rather, they were designated as "unlawful combatants" or "enemy combatants," whose treatment could remain outside of existing international treaties and law. They, too, have been kept nameless, without counsel, and subject to indefinite and unlimited terms of confinement. Their cases, when and if they are to be tried, are to be held by military tribunals, which can even assign the death penalty, with no procedures for appeal. Even US citizens are being held under this new designation.

One of these individuals, Yaser Esam Hamdi, a US citizen captured in Afghanistan while engaged in what he claims was relief work, was held secretly for two years in solitary confinement, without being charged with any crime. Finally granted access to an attorney after his father sued the government over his detainment, Hamdi's case made it to the US Supreme Court in 2004, where

eight of nine justices ruled (in *Hamdi v. Rumsfeld*) against the Bush administration's claim to have the executive authority to hold US citizens indefinitely, without any charge, and without any ability to challenge the imprisonment. One of the court's most conservative members, Antonin Scalia, even authored a separate opinion that concluded, "The very core of liberty secured by our Anglo-Saxon system . . . has been freedom from indefinite imprisonment at the will of the Executive." Hamdi was released, but only after agreeing to renounce his American citizenship. Still, more than 600 "enemy combatants" were held in Guantanamo Bay, a US naval base in Cuba, precisely because it is not in the United States and is solely under the jurisdiction of the US military, away from the jurisdiction of American courts. But in 2008, the US Supreme Court ruled that detainees must have access to federal courts, and that military tribunals are no substitute for a civilian court process. Justice Anthony Kennedy, writing for the majority, declared that "the laws and Constitution are designed to survive, and remain in force, in extraordinary times."[59]

HOMELAND SECURITY

In the days after the September 11 attacks, President George W. Bush assigned Tom Ridge, then the governor of Pennsylvania, to head a new top-level executive agency, the Office of Homeland Security (OHS). The agency was elevated to a status similar to that of the National Security Council, which advises the president on national security threats and policy. Ridge's job as head of the OHS was to coordinate the activities of dozens of agencies involved in domestic antiterrorism efforts, including the FBI, the Centers for Disease Control, the Department of Justice, the Federal Emergency Management Agency (FEMA), the Customs Bureau, the Department of Health and Human Services, the Coast Guard, the US Postal Service, the Border Patrol, and others—forty-six agencies and bureaucracies altogether—as well as coordinating their efforts with state and local agencies.[60]

Ridge also introduced the Homeland Security Advisory System (now discarded), which used five colors to indicate potential threats: (1) green, indicating a "low" risk of attack; (2) blue, indicating a "guarded" or general risk; (3) yellow, indicating an "elevated" or significant risk; (4) orange, indicating a "high" risk; and (5) red, indicating a "severe" risk. Ridge decided on the state of alert in consultation with the attorney general, the nation's top law enforcement official. The point of the system was to put federal, state, and local government agencies on varying states of alert, corresponding to the then-current intelligence assessments of risk. At each higher state of alert, national agencies and departments were to implement a set of "protective measures" to reduce

their vulnerability and increase their response capabilities. The system did not, however, recommend specific protective measures that state and localities should implement during these higher states of alert. This was one of many criticisms lodged by the Congressional Research Service in a report submitted over a year after the system was begun. There was also a concern that since this system was so vague, the public might simply disregard the warnings. States were on their own to design their own protective measures—and to pay for them, too. Concern increased among state and local officials about the rising costs associated with implementing their own security measures in response to orange alerts. After President George W. Bush won reelection, the color system was abandoned, leading many critics to conclude that one of the reasons the Bush administration created and maintained the system was to manipulate fears leading up to the 2004 election.[61]

It was obvious to observers that Ridge faced an enormous task as head of the OHS. As one news report at the time noted, "Not since the Second World War has anyone been given such enormous responsibility to protect the nation's homeland security as Tom Ridge." Congress was anxious to grant Ridge statutory authority and a congressionally approved budgetary authority, but President Bush and Ridge insisted that Bush's executive order and Ridge's close proximity to the president would be enough for Ridge to succeed. Ridge even lobbied Congress not to create a permanent new agency. He and other Bush confidants argued that any government reorganization would prove to be hopelessly disruptive and politically impossible. Yet, in the face of increasing congressional scrutiny of intelligence-gathering lapses leading up to the 9/11 attacks, and Democratic congressional efforts to centralize domestic security functions, President Bush suddenly announced his support for a new Department of Homeland Security.[62]

Bush noted that his proposal was "the most extensive reorganization of the federal government since the 1940s," and he compared the anticipated new department with the Department of Defense and related agencies, created in the wake of World War II to concentrate authority and responsibility for international security. That effort, guided by President Harry Truman, had taken over two years. Bush wanted the work on the new department to be completed before the end of the year. And it was, as Republicans made it a campaign issue in the 2002 midterm elections. The new department, in Bush's words, would be charged with four primary tasks:

- "Control our borders and prevent terrorists and explosives from entering our country."
- "Work with state and local authorities to respond quickly and effectively to emergencies."

- "Bring together our best scientists to develop technologies that will detect biological, chemical, and nuclear weapons. And to discover the drugs and treatments to best protect our citizens."
- "Review intelligence and law enforcement information from all agencies of government and produce a daily picture of threats against our homeland."

The merger of twenty-two existing agencies and nearly 170,000 government workers would create the third-largest entity in the national government, behind the Department of Defense and the Department of Veterans Affairs. Bush's thirty-two-page proposal emerged from Congress as a 500-page law, loaded with special-interest provisions, including a repeal of the ban on granting homeland security contracts to companies with offshore tax havens, and an exemption from lawsuits for the makers of vaccines, intended to shield one company, Eli Lilly, from preexisting lawsuits involving a children's vaccine suspected of causing neurological damage. The law also stripped the 170,000 employees in the new department of civil service protections and union bargaining rights, which critics feared could turn the department into a huge patronage system and lead to the busting of government unions.[63]

The law creating the Department of Homeland Security (DHS) gave it broad authority to receive and analyze intelligence information from all governmental intelligence-gathering sources and act as the government's clearinghouse for information about terrorist threats. But this was not to be, as the authority for such a clearinghouse went instead to a new Terrorist Threat Integration Center (renamed the National Counterterrorism Center in 2004), organized by the CIA, FBI, and some of the Department of Defense's intelligence agencies, with a director appointed by and reporting to the CIA's director. The DHS actually plays only a limited intelligence role, basically acting as a consumer of intelligence reports, using them to help shore up defenses around key sites, such as power plants, dams, and nuclear reactors. The close physical and organizational proximity of the new Terrorist Threat Integration Center to the CIA raised concerns in Congress, where senators from both parties expressed worries that the CIA's close involvement with the new center could violate prohibitions in the CIA's charter about operating in the United States. Senators also expressed worries about whether the new center's patchwork organization of personnel from many different agencies could be effective, especially because the CIA is prohibited from sharing information or cooperating with domestic law enforcement agencies.[64]

In 2010, the *Washington Post* published a series of articles about the enormous growth in the post-9/11 intelligence-gathering apparatus in a report entitled "Top Secret America: A Hidden World, Growing beyond Control." They

noted the incredible growth in government agencies designed to meet the terrorist threat, including an increase from 7,500 to 16,500 employees in the Defense Intelligence Agency, a doubling of the National Security Agency's budget, and a tripling in the number of FBI Joint Terrorism Task Forces, from 35 to 106. As the articles reported, "Military and intelligence agencies multiplied. Twenty-four organizations were created by the end of 2001. . . . In 2002, 37 more were created to track weapons of mass destruction, collect threat tips, and coordinate . . . counterterrorism. This was followed the next year by 36 new organizations; and 26 after that; and 31 more; and 32 more . . . in 2007, 2008, and 2009." The authors concluded, "In all, at least 263 organizations have been created or reorganized as a response to 9/11." The end result was that the excessive bureaucratic growth led to confusion, redundancies, and information overload that, as many top officials have reported, "is actually counterproductive."[65]

The other step the government took was to considerably ratchet up the ability of selected agencies to spy on American citizens. For no agency was this more true than the National Security Agency, whose domestic spying activities were exposed by Edward Snowden in June 2013. Snowden's leaked documents created a firestorm of controversy, precisely because they showed that since 2001, the NSA had been secretly gathering detailed information about Americans' phone calls and Internet usage, all the while denying that they were doing so. NSA is empowered to collect foreign intelligence, but it is strictly limited in its domestic activities. In the wake of 9/11, however, President Bush secretly authorized the NSA to engage in surveillance and data-gathering activities without adhering to congressionally imposed rules and judicial oversight. The program continued unabated under President Obama, whose administration also used the 1917 Espionage Act to prosecute seven government whistleblowers and leakers, more than all previous administrations combined. In the wake of the Snowden revelations, the *New York Times*, normally reliably pro-Obama, editorialized that President Obama's administration "has now lost all credibility" on the issue of surveillance, while the American Civil Liberties Union said the NSA's surveillance "is beyond Orwellian, and it provides further evidence of the extent to which basic democratic rights are being surrendered in secret to the demands of unaccountable intelligence agencies."[66] Congress responded to the revelations in 2015, passing the USA Freedom Act, a renewal of the earlier PATRIOT Act that nonetheless ends the controversial collection programs and puts back in place legal limits and judicially enforced rules.

Conclusion

Many conservatives, especially those who self-identify as Libertarians, are as concerned about the governmental violations of fundamental civil liberties as

are liberals. Bob Barr, one of the most conservative House Republicans, responded to the first revelations of NSA spying on Americans by stating: "One, it's bad policy for our government to be spying on American citizens through the [NSA]. Secondly, it's bad to be spying on Americans without court oversight. And thirdly, it's bad to be spying on Americans apparently in violation of federal laws against doing it without [a] court order. So it's bad all around." As civil liberties activist Glenn Greenwald puts it: "One ingrained American political principle is that citizens cannot and must not be punished by the state for expressing ideas and opinions, no matter how reprehensible, repulsive, or even dangerous those ideas and opinions may be. That is a founding and defining principle of America."[67]

As we see here, principled conservatives and liberals often agree that civil and political liberties must be protected from abuse by a sometimes all-too-powerful and far-reaching government. This applies particularly when a government is bent on abusing this fundamental responsibility by limiting dissent and overreacting to existing threats to domestic security. This chapter has reviewed the many occasions when civil liberties have been trodden underneath the government's desire to suppress constitutionally protected speech and behavior. We have also seen how the government can exploit legitimate fears concerning crime and terrorism to expand their own budgets and bureaucratic empires, as well as expand the powers of the government over its citizenry. These repeated and continuing instances mark the problems and controversies the United States has faced in upholding civil liberties and restraining the government's abuse of its domestic security powers. Abuses of citizens' constitutionally protected rights by domestic security state programs and officials stand as an object lesson for those who fear the government. Yet we cannot help but notice that it is often many of the conservatives favoring small government who champion these expansions in the government's authority.

From before the World War I–era Palmer Raids to the current heightened concern with terrorists, the government has had to balance concerns over domestic security with the constitutional protections for civil and political liberties. It is difficult not to conclude that the government has crossed the line in almost every case of domestic emergency, infringing upon constitutional standards for these liberties. And when this has occurred it has, in almost every case, provoked national soul-searching after the fact. As the *New York Times* editorialized a year after the September 11 terrorist attacks, at another moment when government authorities sought broader and less constrained authority to deter threats to domestic order, "Every time the country has felt threatened and tightened the screws on civil liberties, it later wished it had not done so."[68]

Notes

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3. Glenn Greenwald, *No Place to Hide: Edward Snowden, the NSA, and the U.S. Surveillance State* (New York: Henry Holt, 2014), 27–28, quote at 94.

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5. Frank J. Donner, *The Age of Surveillance: The Aims and Methods of America's Political Intelligence System* (New York: Knopf, 1980), 5; Morton H. Halperin, Jerry J. Berman, Robert L. Borosage, and Christine M. Marwick, "The Bureau in War and Peace," in *The Lawless State* (New York: Penguin, 1976), 90; Kessler, *The Bureau*, 101–6; Taylor Branch, *Pillar of Fire: America in the King Years, 1963–65* (New York: Simon & Schuster, 1998), 149.

6. Paul L. Murphy, *World War I and the Origin of Civil Liberties in the United States* (New York: W. W. Norton, 1979), 26–27, 51–64, quote at 79.

7. Ibid., 63–70; 153–54, 248–72.

8. Ibid., 74–85, 107–12, quotes at 79, 96, 248; Richard Polenberg, *Fighting Faiths: The Abrams Case, the Supreme Court, and Free Speech* (New York: Penguin Books, 1987), 27–36, 155–59, 166.

9. Kessler, *The Bureau*, 11; Donner, *Age of Surveillance*, 290–91; Polenberg, *Fighting Faiths*, 167.

10. Polenberg, *Fighting Faiths*, 162–72; Louis Hartz, *The Liberal Tradition in America* (New York: Harcourt, Brace, Jovanovich, 1955), 293–307.

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12. Donner, *Age of Surveillance*, 35–39; Kessler, *The Bureau*, 15–16.

13. Donner, *Age of Surveillance*, 46–47; Stone quote in US Senate, *Intelligence Activities and the Rights of Americans*, book 2 in *Final Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities*, S. Rep. No. 94-755, 94th Cong., 2nd Sess., April 23, 1976 (Washington, DC: US Government Printing Office, 1976), 2:23.

14. US Senate, *Intelligence Activities*, 2:24–28, 30–33; Donner, *Age of Surveillance*, 36, 52–62; Murphy, *Origins of Civil Liberties*, quote at 59; Kessler, *The Bureau*, 53–54.

15. T. H. Watkins, *Righteous Pilgrim: The Life and Times of Harold L. Ickes, 1874–1952* (New York: Henry Holt, 1990), 631–36; US Senate, *Intelligence Activities*, 2:24, 28–30.

16. Donner, *Age of Surveillance*, 61–64, 386–87, quote at 63.

17. Ibid., 61–64, 386–87; Watkins, *Righteous Pilgrim*, 635; Berman, "Bureau in War and Peace," 97–101; Kessler, *The Bureau*, 55–57.

18. John Morton Blum, *V Was for Victory: Politics and American Culture during World War II* (New York: Harcourt, Brace, Jovanovich, 1976), 155–67, quotes at 155, 159, 162; Peter A. Irons, *A People's History of the Supreme Court* (New York: Viking, 1999), 348–64.

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21. Congressional Quarterly, *Congress and the Nation*, 1:1645–57; David Halberstam, *The Fifties* (New York: Villard Books, 1993), 49–56; Truman quote in James T. Patterson, *Grand Expectations: The United States, 1945–1974* (New York: Oxford University Press, 1996), 188.

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23. Berman, "Bureau in War and Peace," 103–6, first two quotes at 103, 104; Donner, *Age of Surveillance*, 102; US Senate, *Intelligence Activities*, 2:38–39; Congressional Quarterly, *Congress and the Nation*, 1:1646–47, 1650–51, 1654–58, Truman veto quote at 1655.

24. Congressional Quarterly, *Congress and the Nation*, 1:1646, 1657, 1665.

25. Donner, *Age of Surveillance*, 139–47.

26. US Senate, *Intelligence Activities*, 2:41–49, 172–78, quotes at 2:48, 175, 178; Berman, "Bureau in War and Peace," 118.

27. Quote in US Senate, *Supplementary Detailed Staff Reports on Intelligence Activities and the Rights of Americans*, book 3 in *Final Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities*, S. Rep. No. 94-755, 94th Cong., 2nd Sess., April 23, 1976 (Washington, DC: US Government Printing Office, 1976), 3:10, see also 3:3–7, 27; Berman, "Bureau at War and Peace," 111–12.

28. Quotes in US Senate, *Supplementary Detailed Staff Reports*, 3:11, 6, see also 3:3–7, 27; Berman, "Bureau at War and Peace," 111–12.

29. Donner, *Age of Surveillance*, 177–80, quote at 178; US Senate, *Supplementary Detailed Staff Reports*, 3:8, 17–61; Kessler, *The Bureau*, 138.

30. US Senate, *Intelligence Activities*, 2:177–78; US Senate, *Supplementary Detailed Staff Reports*, 3:8, 17–61, first quote at 3:16, 22, other quotes at 177; Donner, *Age of Surveillance*, 212.

31. The CIA had also engaged in surreptitious drug testing—which included studying the effects of LSD—on unsuspecting Americans from the early 1950s on.

The program was kept secret for years because, as the CIA's inspector general warned, open knowledge of the agency's "unethical and illicit activities" was likely to result in "political repercussions" (US Senate, *Intelligence Activities*, quote at 2:57).

32. US Senate, *Intelligence Activities*, 2:57–59, 69, 168–80; Halperin et al., "The CIA—at Home," in *The Lawless State* (New York: Penguin, 1976), 145–54, quotes at 146; Donner, *Age of Surveillance*, 269–79.

33. US Senate, *Intelligence Activities*, 2:167–72; Halperin et al., "The National Security Agency," in *The Lawless State*, 171–86; Donner, *Age of Surveillance*, quote at 276.

34. US Senate, *Intelligence Activities*, 2:77, 174, 177, army documents quotes at 77; Donner, *Age of Surveillance*, 294–320, House Report quote at 295; Halperin et al., "Military Intelligence," in *The Lawless State*, 155–70.

35. Halperin et al., "The Internal Revenue Service," in *The Lawless State*, 187–208, first quote at 198; Donner, *Age of Surveillance*, second quote at 335; US Senate, *Intelligence Activities*, 2:53–54, 93–96.

36. Kessler, *The Bureau*, quote at 41.

37. Halperin et al., "The FBI's Vendetta against Martin Luther King," in *The Lawless State*, 67–89; Branch, *Pillar of Fire*, first quote at 245, second quote at 526, see also 197, 245–46, 483–84, 533, 569; Donner, *Age of Surveillance*, 214–15.

38. Congressional Quarterly, *Congress and the Nation*, vol. 4 (Washington, DC: CQ Press, 1977), 4:182–95, 598–99, 615.

39. Kessler, *The Bureau*, 180, 197–209; Howard Kurtz, "FBI Probes Activist," *Washington Post*, January 31, 1988; quotes in Eric Lichtblau, "FBI Scrutinizes Antiwar Rallies," *New York Times*, November 23, 2003.

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Drugs (Westport, CT: Praeger, 1997), 38–40; Parenti, *Lockdown America*, 13; Miller, *Drug Warriors*, 157–59; Kenneth J. Meier, *The Politics of Sin: Drugs, Alcohol, and Public Policy* (Armonk, NY: M. E. Sharpe, 1994), 45–47; Congressional Quarterly, *Congress and the Nation*, 4:566–67.

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44. Parenti, *Lockdown America*, 49–54; Miller, *Politics of Sin*, 99–101.

45. Meier, *Politics of Sin*, 51–52; Levinson, *The Drug Problem*, 27–28; Safire quoted in Parenti, *Lockdown America*, 56; James P. Gray, *Why Our Drug Laws Have Failed and What We Can Do about It* (Philadelphia: Temple University Press, 2001), 27.

46. Parenti, *Lockdown America*, 57.

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The Regulatory State

The regulatory state establishes and enforces the rules that govern the economy, including such issues as property rights, market structure, allowable levels of pollution, and product and worker safety standards. The regulatory state is the arena in which government policy creates and shapes market interactions. While the standard definition of the state emphasizes the authority that has a legitimate monopoly on violence within a territory, the state also maintains a legitimate monopoly over rule making, rule monitoring, and rule enforcement.[1]

As Karl Polanyi has stressed, market societies were not spontaneous, natural outgrowths of human nature, but instead were politically created. Yet historically, as market forces were unleashed, there was a countermovement of regulations to protect individuals from its brutal consequences and stabilize the economy, Polanyi's double movement of laissez-faire and social protection. Market fundamentalists, on the other hand, present markets as the outgrowth of human nature, following Adam Smith's now-famous claim concerning a natural propensity to "truck, barter, and trade." As long as property rights are protected, they claim, markets function optimally if left alone. Thus today's market fundamentalists stress the need to remove government restrictions in order to free market forces. When government does regulate economic activity, they portray it as "intervening" in the market, harming both freedom and prosperity. These claims obscure the actual dynamics of market behavior, because markets cannot function without mandated rules, and they cannot exist without a functioning legal framework. It is for this reason that Marc Eisner, echoing Polanyi, notes, "Any reference to state *intervention* in the market ignores the basic fact that the market itself is constituted by public policy."[2] Government regulation is integral to the functioning of a modern economy, according to Lauren Edelman and Mark Suchman, because modern economic organizations are creatures of law:

> [They] are born through the legal act of incorporation, and they die through the legal act of bankruptcy. In between, they raise capital under securities law, hire employees under labor and antidiscrimination law,

> exchange goods and services under contract law, develop public identities under trademark law, innovate under patent and copyright law, and engage in production under environmental, health, and safety law. Specific bodies of legal rule define, protect, and regulate many industries and most professions. Even the basic distinctions between "private," "public," and "nonprofit" are in part legal constructs.[3]

The basic structure of the regulatory state expanded during the three domestic-reform periods of twentieth-century American history—the Populist/Progressive Era, the New Deal, and the 1960s–1970s era—but regulation of the economy, or of health and safety, did not suddenly burst onto the scene in the late nineteenth century. Since the beginning of the nation, Congress has delegated authority to bureaucratic officials to develop and implement a variety of rules structuring economic interactions. For example, Jerry Mashaw notes that within ten years of the Constitution's ratification, "licenses were required for ships engaged in coastal trade and in the whale and [Outer] Banks fisheries, and for trading with Indian tribes. The terms and conditions of seamen's contracts were regulated along with provisions, medicines, and seaworthiness of vessels employing them."[4] Health and safety regulations were also an explicit focus of America's early national government. As the death toll mounted with the use of marine steam boilers, reaching over 2,000 between 1816 and 1848, "Congress created the first agency empowered to supervise and direct the internal affairs of a sector of private enterprise in detail."[5] Steamboat inspections reduced the death toll and established a precedent for subsequent railroad regulation. Meanwhile, as Mashaw points out, the US Patent Office (1790) was the nation's first regulatory agency outside of an executive department, not the Interstate Commerce Commission (1887), as is commonly claimed.[6]

Compared with the industrial democracies of Europe, for decades the US regulatory state was quicker to act, stricter in its rules regulating economic behavior, and more protective of consumer and environmental safety. "From the 1960s to the 1980s," David Vogel emphasizes, "American regulatory standards tended to be more stringent, comprehensive, and innovative than in either individual European countries or in the European Union."[7] As a result, during that period, Americans enjoyed higher levels of protections from dangerous products. Drug safety, air pollution controls and limits, antismoking legislation, and restrictions on chemical additives in food are just a few of the areas where US regulations were more strict. These regulations provoked more conflict between business and government in the United States than in other advanced democracies, leading one scholar to describe the dynamics of US regulation as "adversarial and legalistic," and the relations between business and government officials as "formal, distant, [and] suspicious."[8]

Although the regulatory state is as old as the nation, it has not developed without counterpressures against regulation. Opponents of regulation have often invoked a faith in laissez-faire to limit the reach of government. Beginning in the mid-1970s, these forces have succeeded in lifting or substantially reducing government controls for certain sectors of the economy, such as airlines, trucking, and phone services. At the same time, for the past thirty years, conservative attacks on the regulatory state have significantly slowed the pace of US health and safety regulations. Agency budgets have languished, and aggressive business opposition has put regulators on the defensive. Regulations have been framed as job destroying and as providing unneeded protections to the public. Business lobbyists have often used the White House to block or slow down proposals when regulatory agency officials—usually over the objections of affected industries—have taken initiatives. Public interest advocates have been outmatched by the muscle of corporate America.

The recent dynamics of regulatory politics has been much different in the European Union. Motivated by the precautionary principle—an action should be taken if the consequences are potentially dangerous—the European Union has taken the lead in pushing for greater environmental, health, and safety regulations. Hundreds of chemicals have been banned from use in the European Union that remain legal in the United States. EU regulators have also been more willing to challenge large corporations on a range of antitrust issues, with notable penalties levied against some of America's corporate giants such as GE and Microsoft, for their monopoly attempts.

For the most part, regulations are made by agencies of the national government, with authority delegated to them by Congress, yet sometimes Congress itself sets rules, through legislation. There are over 100 agencies of the national government with rule-making powers, with the overwhelming majority of them within the executive branch, such as the National Highway Traffic Safety Administration, which is part of the Department of Transportation. Top officials in these agencies serve at the pleasure of the president. There are also approximately twenty independent regulatory agencies, typically known as commissions (such as the Federal Communications Commission), where commissioners serve for a set term of office. Because of the extensive authority exercised by both agencies and commissions, they have been described as the fourth branch of government.

It is not possible to account for the contribution of regulation to a modern market society in a systematic way, since many regulations that establish the basic rules of economic behavior are embedded in the structure of the economy. One partial method of estimating the impact of regulation is to measure the costs and benefits of recent major efforts in this area. Congress requires the White House Office of Management and Budget (OMB) to provide an an-

nual report on the costs and benefits of regulation. In its 2015 report, the OMB estimated that between 2003 and 2013, for agencies that calculated benefits and costs monetarily, the aggregate benefits of regulation were between $217 billion and $863 billion, while estimated costs were between $57 billion and $84 billion (in 2001 dollars). Estimated benefits are notoriously low, however, since many agencies do not put a dollar figure on lives saved, or injuries prevented. Costs, on the other hand, are usually much easier to estimate, but these estimates, typically based on industry projections, have been repeatedly shown to be exaggerated.

Nevertheless, government regulation cannot be evaluated simply by comparing economic costs with measurable benefits. For example, pollution control saves lives. In 1990, the Environmental Protection Agency estimated that Clean Air Act regulations alone were responsible for preventing 205,000 deaths that year. And in 2011, the EPA estimated that the regulation of particulate matter in the air, as a result of the 1990 Clean Air Act, prevented 160,000 deaths in 2010; by 2020, the number of deaths prevented would reach 230,000 per year.

Broadly speaking, the regulatory state is comprised of two kinds of regulation: economic and social. The Congressional Budget Office defined economic regulation as "those activities which impact major aspects of private enterprise operations, such as market entry and exit; rate, price, and profit structures; and competitive environment."[9] In contrast, environmental, health, and safety regulations are known as social regulation. Social regulations are concerned with the safety of products, the health and safety of workers, and pollution control. Another way to understand the difference between these two types of regulation is that with economic regulations the benefits are typically narrow, at least on the surface, with the regulated industry being the main beneficiary, while the costs are widely spread among the public. Most of these types of regulation were initiated at the behest of business. Still, the public benefits from the market stability and economic predictability that these regulations can bring. For example, the Federal Communications Commission is responsible for dividing up radio broadcast frequencies so radio station signals do not interfere with one another. It is also responsible for regulations governing the Internet in terms of net neutrality—whether all Internet service providers must treat all Internet traffic equally, as opposed to being able to charge different rates and set different speeds for various content providers. Meanwhile, truth in advertising, labeling laws, and many other examples of economic regulation provide consumers with the information needed to make informed decisions.

Social regulation, on the other hand, offers broad public benefits. An example would be clean air regulations, where the benefits are enjoyed by everyone, with the up-front costs placed on the polluting corporations. In general,

environmental, health, and safety laws provide protections against the risks of modern technology. Although social regulation has been more controversial than economic regulation, these types of regulation can also benefit business, since product safety standards provide consumers with the confidence that their purchases are relatively safe. Nevertheless, most of these types of regulation have been the result of pressure by public interest groups.

While many regulatory standards are complex and often highly technical, sometimes it is easy to understand what is at stake. The Food and Drug Administration (FDA), for example, sets the maximum levels of "natural or unavoidable defects in foods for human use that pose no inherent hazard to health," because, they argue, it is "economically impractical to grow, harvest, or process raw products that are totally free of nonhazardous, naturally occurring, unavoidable defects." In other words, a certain number of insect fragments, hairs, or rodent droppings are allowed in everyday food items. Regulations for ground pepper allow an average of 475 or more insect fragments per 50 grams, and an average of 2 or more rodent hairs per 50 grams. For ground oregano, an average of 1,250 or more insect fragments per 10 grams and an average of 5 or more rodent hairs per 10 grams are allowed. Scores of items—from spices to dried fruits, and from peanut butter to frozen vegetables—are regulated in this way. The FDA insists that, should any of these "imperfections" pose a measurable risk to human health, they would be subject to regulatory prohibition.[10] Needless to say, few, if any, citizens are aware of how many insect fragments or rodent droppings are allowed in food items, but for food producers, these regulations are an essential aspect of doing business. Tighter rules could require expensive changes in the production process.

Regulation in the Eighteenth and Nineteenth Centuries

All too often, government regulation of the economy is described as beginning in the late nineteenth century, with the rise of large corporations serving national markets. State and local governments, however, have always regulated economic and social life. The notion of a "well-regulated society," rooted in traditional customs, guided public policy in early America. "Its governance," historian William Novak explained, "was predicated on the elemental assumption that public interest was superior to private interest. Government and society were not created to protect preexisting private rights, but to further the welfare of the whole people and community."[11] The powers exercised by state and local governments were nothing like the laissez-faire portrait of nineteenth-century government celebrated by market fundamentalists. During the colonial period, states exercised extensive powers, licensing and inspecting economic activity. In Pennsylvania, for example, there were "detailed regula-

tions concerning packing, dimensions of containers, brand marks of dealers, and inspection methods and markings."[12] The range of items subject to inspection included "flour, fish, beef, pork, hogslard, flaxseed, butter, biscuits, harness and leather, tobacco, shingles, potash and pearlash, staves, heading and lumber, ground black-oak bark, pickled fish, spiritous liquors, and gunpowder."[13] A number of occupations were also licensed, including "inn-keepers, peddlers, retailers of foreign goods, liquor merchants, brokers of various kinds, wharfage pilots, and auctioneers."[14] National regulation was also widespread throughout the nineteenth century. In reviewing this history, Novak concludes that "the US economy has developed in the shadow of almost constant and continuous scrutiny, investigation, promotion, protection, regulation, and redistribution by a cadre of public officers and national economic regulators."[15] In any case, during the Progressive Era, national regulation became much more extensive.

The Populist/Progressive Era

The need for national regulation was due to the transformation of the US economy in the late nineteenth century. Instead of small, locally oriented firms, located within a largely agrarian nation, emerging corporate giants, with a national reach, came to dominate the economy. Emblematic of this shift was the massive 1901 merger of hundreds of companies to create US Steel, the nation's first billion-dollar enterprise, controlling the majority of steel production in the United States. With the rise of industrialism and the spread of the railroads, small farmers mobilized to protect their interests from these large corporations. Under the banner of Populism, there were widespread calls for the regulation of railroads and banks, and for protection of the agrarian way of life.

The push for greater national regulation accelerated in response to the 1886 US Supreme Court ruling that state regulation of railroad rates was unconstitutional, because shipping was part of interstate commerce and thus was the exclusive domain of the national government.[16] This decision reversed a legal case from just nine years earlier, which had upheld state regulation of rates for warehouses and railroads. In this earlier case, private property involved in commerce—producing and selling goods and services—was understood as "affected with a public interest" and therefore subject to state regulation.[17] With the avenue of railroad regulation by the various states now closed, Congress established the first modern regulatory agency, the Interstate Commerce Commission (ICC), the following year. This was not, however, simply a victory of small farmers over big business. Because of intense competition between railroad lines, many railroad officials viewed regulation as a way to stabilize the industry, by having a rate-setting agency to limit price cutting. The ICC's

responsibility was to ensure that rates were "reasonable and just." The agency worked so closely with the railroad companies that the ICC became an extension of the industry, protecting railroad companies first, with the public a distant second.

Populist forces also sought to rein in the growing concentration of economic power by preventing monopolies. John Sherman, author of the 1890 Sherman Antitrust Act, took to the Senate floor to rail against growing economic concentration: "If we will not endure a King as a political power, we should not endure a King over production, transportation, and sale of the necessities of life. If we should not submit to an emperor, we should not submit to an autocrat of trade, with power to prevent competition and to fix the price of any commodity."[18] The law banned combinations in restraint of trade, monopolies, and attempts at monopolization. At that time, there had been massive consolidations across a wide range of industries, dominated by trusts—holding companies that controlled a number of companies—or other economic arrangements designed to lessen competition in the steel, oil, sugar, meat, tobacco, gunpowder, railroad, and farm machinery industries. Decades later, the US Supreme Court reiterated what the act attempted to accomplish. The Sherman Act was designed to be a comprehensive charter of economic liberty, aimed at "preserving free and unfettered competition as the rule of trade. It rests on the premise that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality, and the greatest material progress, while at the same time providing an environment conductive to the preservation of our democratic political and social institutions."[19]

The law, which was administered by the Department of Justice, left much to interpretation. What, exactly, was an "attempt" to monopolize? And what qualified as a monopoly control—100 percent of the market? For many, the monopoly question, as it was called, hinged on whether large corporations were the result of mass production and the natural workings of the market, and thus should be accepted and regulated. Or were they the result of unfair business practices or special privileges, and thus should be broken up to maintain competition?

While the vigor of antitrust enforcement has varied, compared with that of other industrial democracies, there has been a greater fear of economic concentration in the United States and, as a result, stricter antitrust enforcement. Thus, as Richard Lehne argues: "American antitrust laws are unique. No country has tried more consistently to structure economic competition and supervise marketplace behavior than the United States."[20] Notwithstanding this unique history, over the past 100 years, economic concentration has increased, and the debate over the concentration of economic power and its implications for a democratic society is now a faint echo of what it once was.

By the turn of the twentieth century, severe depressions, bank panics, and reactions to muckraking tales of political corruption fueled calls for more regulation of industry. Workers, farmers, and middle-class reformers reacted in horror to the working conditions of early industrial capitalism and to the unsafe products being sold. Despite calls for greater protections from unfettered market behavior, which has fed the view that Progressive Era regulation was a victory of the public interest over big business, executives of some of the largest firms also wanted regulation. They understood that unregulated competition hurt profits. Excessive competition led to business failures, unemployment, and depression.[21] At the same time, small firms often engaged in unscrupulous behavior that harmed the reputation of an entire industry. Regulation could thus be used to competitive advantage by driving small firms under, since they would be less able to afford new standards of operation. National regulation, as opposed to regulation by individual states, would also make interstate commerce easier.

Meat packing and banking are two early examples of industries that used government regulation to their benefit. Large meat packers had lobbied for regulation for twenty years prior to the 1906 Meat Inspection Act. During the 1880s, European nations, one by one, had closed their markets to American exports, due to the prevalence of unhealthy US animals. In response to pressures from the meat-packing industry, the 1891 Meat Inspection Act mandated the inspection of all live cattle for export, as well as for all live cattle that were to be slaughtered and their meat exported. The need for national inspection for the domestic market was stressed by J. Ogden Armour, one of the leading members of the meat industry, before the 1906 Meat Inspection Act was passed:

> Attempts to evade it would be, from the purely commercial viewpoint, suicidal. *No packer can do an interstate or export business without Government inspection*. Self-interest forces him to make use of it. Self-interest likewise demands that he shall not receive meats or by-products from any small packer, either for export or other use, unless the small packer's plant is also "official"—that is, under United States Government inspection.
>
> This government inspection thus becomes an important adjunct of the packer's business from two viewpoints. It puts the stamp of legitimacy and honesty upon the packer's product and so is to him a necessity. To the public, it is *insurance* against the sale of diseased meats. (emphasis in original)[22]

Nonetheless, pressure from the large meat packers was insufficient to overcome the ideology of laissez-faire and the influence of smaller firms in the

industry. A loud public outcry was needed. It came in response to the unsavory practices detailed in Upton Sinclair's 1906 novel, *The Jungle*. After reading the book, President Theodore Roosevelt initiated an investigation that corroborated Sinclair's depiction of Chicago's slaughterhouses, and he then endorsed the call for a meat inspection bill. Ironically, Sinclair's book had not concentrated on the disgusting practices and unhealthy products coming from the nation's slaughterhouses, but instead had sought to expose the harsh, inhuman working conditions of immigrant workers. Sinclair ruefully noted: "I aimed at the public's hearts, and by accident hit it in the stomach." The 1906 law required sanitary standards for slaughterhouses and processing plants, as well as continuous US Department of Agriculture inspection of meat processing and packaging.

On the same day that the Meat Inspection Act was signed, President Roosevelt also signed the Pure Food and Drug Act, one of the cornerstones of Progressive Era consumer protection laws. For several years, public health officials had worried that too many products being sold were dangerous, adulterated, or misbranded. Fruit preserves, for example, could contain little fruit; some chemical preservatives were toxic; and ingredients used were not required to be listed on labels. At the same time, the nascent drug industry promised cures when none were proven, or even possible. Dr. Harvey Wiley, known as the father of the FDA and its first commissioner, claimed that tens of thousands of Americans died each year due to adulterated foods and worthless patent medicines.

Overcoming the industry's opposition, the Pure Food and Drug Act required labels to list a product's true contents. In other words, misbranding or adulteration was prohibited. Chemical additives that were dangerous counted toward adulteration. Labels were not required to contain product contents, however, and claims about cures that were on flyers or other advertisements were not subject to any controls.[23] (Such requirements would not be put in place until decades later.)

The other major economic regulatory programs of the Progressive Era were the Federal Reserve Board (1913) and the Federal Trade Commission (1914). The Federal Reserve Act, which established what is known euphemistically as "the Fed," was an attempt to stabilize the banking industry. At that time, there was no national mechanism to shore up failing banks. Financial panics had been a periodic problem for decades, but it was the financial Panic of 1907, when the New York Stock Exchange lost half its value and several major banks collapsed, that led to national banking reform. Historian Gabriel Kolko stresses that, notwithstanding the conflicts over some of the particulars in each financial regulatory bill, the nation's leading bankers led the final push for reform: "The major function, inspiration, and direction of the measure

was to serve the banking community in general, and large bankers specially."[24] Kolko concludes that the Federal Reserve Act was "the result of a movement led by bankers seeking rationalization, and hoping to offset the decentralization of banking toward small banks and state banks."[25] The Fed was empowered to set reserve requirements (the percentage of deposited funds held in reserve, and not loaned) that banks had to obey. In addition, the Fed could loan money to banks at discounted rates. In essence, the Fed was now in a position to regulate banking behavior and control the nation's money supply, in order to stabilize the economy.

To enhance antitrust enforcement, in 1914 the Federal Trade Commission (FTC) was given the broad responsibility to regulate "unfair methods of competition." Attempts to monopolize, or at least compete unfairly, now would be scrutinized by an agency with the specialized expertise to investigate and regulate such actions. This move was necessary after the US Supreme Court ruled that only "unreasonable" combinations ran afoul of the Sherman Antitrust Act. The court ruled that the act's prohibition against "restraints on trade" was too broad, since all contracts restricted trade in some way. Monopolies per se were not a problem. Only those combinations or practices that unduly or unreasonably constrained trade could be considered illegal. In this particular case, John D. Rockefeller's Standard Oil Company, which, at its peak, controlled more than 90 percent of US oil production, was held to be in violation of the law for illegally monopolizing the petroleum industry.[26] The oil giant was broken up into thirty-four firms, but the case was understood at the time to have gutted the Sherman Antitrust Act. (Over time, one of these firms became Exxon and another became Mobil. They reunited to become one company in 1999.) William Jennings Bryan, the fiery populist and three-time Democratic presidential candidate, lamented, "The trusts have won."[27]

Progressive Era regulation also extended to the public lands. The early conservation movement, fearing the depletion of the nation's natural resources, sought to bring scientific management to the nation's publicly held natural resources. Rejecting the principle of laissez-faire, early conservationists wanted to make capitalism work better. They were divided along three lines, according to environmental historian Clayton Koppes: those who wanted to use the nation's resources efficiently, those who wanted to preserve natural beauty, and those who wanted to use the nation's public resources to foster grassroots democracy by equitably distributing resources.[28] Three agencies of the federal government were established to carry out of these respective missions: the Forest Service, the Park Service, and the Bureau of Reclamation.

Beginning in the late nineteenth century, Congress authorized taking public lands in the western United States out of the public domain and creating forest reserves. In 1905, Congress created the Forest Service, housed within the

Department of Agriculture. Rejecting a simple model, in which market demand should determine the volume of timber sales, the Forest Service seeks to conserve the nation's public forests by regulating timber sales for a continuous sustained yield through the administration of "modern engineering and managerial techniques."[29] When the Forest Service was formed, it administered 60 forest reserves (soon renamed national forests), covering 56 million acres of land. By 1910, there were 150 national forests, covering 172 million acres. (In 2016, there were 155 national forests and 20 national grasslands under its control, covering 193 million acres.)

Other conservationists pushed to remove a portion of the public lands from future economic development. Some were motivated by a desire to preserve areas of natural beauty and wilderness for its own sake, while others wanted to provide an antidote to the increasing urbanization of the nation. Yellowstone, the nation's first national park (also the first national park in the world), was established in 1872 and initially was administered independently. In 1916, 35 other parks and national monuments were brought together under one administrative umbrella with the creation of the Park Service, housed within the Department of the Interior. (In 2016, the Park Service administered 59 national parks as well as over 350 monuments and historical properties, covering 84 million acres.)

The Bureau of Reclamation, established in 1902 and housed within the Department of the Interior, manages water resources in seventeen western states. Federal irrigation projects were needed to develop arid lands in this region into productive farms and create thriving communities. Initially, each recipient of federally financed water was limited to 160 acres of land, in order to prevent the concentration of economic power. Not long thereafter, other economic considerations overwhelmed this limitation. (In 2016, the Bureau of Reclamation brought water to 31 million people, and to farms that grew 60% of the nation's vegetables and 25% of the nation's fruits and nuts.)

While many of the rudiments of the national regulatory state were established during the Progressive Era, employee-employer relations was an area that continued to meet stiff resistance from the nation's corporate and legal communities. In response to the oppressive working conditions of an industrializing America, both the individual states and the federal government passed legislation to establish maximum working hours, prohibit child labor, set minimum wages, and protect workers' unionization rights. Once passed, these laws had to overcome the additional hurdle of the US Supreme Court, which was dominated by conservative, corporate-friendly justices. Guided by the doctrine of laissez-faire constitutionalism, the court often, but not always, struck down these efforts as a violation of the liberty of contract (the principle that employees and employers should be free, without government restriction, to form

contracts on wages, working hours, and working conditions). Between 1899 and 1937, the Supreme Court struck down 197 state or federal laws on these and related issues, yet between 1889 and 1918, it allowed 369 such state laws to remain in place.[30]

A key element determining whether these laws survived court challenges was if they protected what was perceived to be particularly vulnerable groups. For example, in 1898, the court upheld a Utah law limiting the working hours of miners, who were seen as engaged in an unusually dangerous occupation. And in 1908, the court upheld an Oregon law limiting the working hours of women to no more than ten hours a day, in light of the "burdens of motherhood."[31] Nevertheless, in 1905, the court struck down a New York State law limiting the working hours of bakers to no more than sixty hours per week as an unconstitutional violation of the liberty of contract.[32]

Repeated federal efforts to regulate child labor or to set a minimum wage were also struck down. In 1918, the court overturned the Child Labor Act, which prohibited the interstate trade of goods produced in factories that employed children younger than fourteen, or those between fourteen and sixteen who worked more than eight hours a day or more than six days a week.[33] In 1923, a federal law setting a minimum wage for women in the District of Columbia met a similar fate. That decision also had the effect of setting aside the few state minimum-wage laws that had previously been passed.[34] Workers' rights to join unions similarly ran afoul of the court's conservative majority. They overturned both a federal and a Kansas attempt to prohibit companies from requiring that workers not join a union as a condition of employment (what was known as a yellow-dog contract) in 1908 and 1915, respectively.[35]

By the end of the Progressive Era, regulatory agencies exercising broad powers were a central part of government and the nation's political economy. The three main regulatory bodies of this period—the ICC, the FTC, and the Federal Reserve—sought to establish general rules for business behavior and regulate the movement of goods, in order to create "market-like results through administrative actions."[36] In other words, making markets work properly required a more active government.

The New Deal

Although regulatory agencies exercising broad powers were a central part of the nation's government and political economy by the end of the Progressive Era, the New Deal significantly enlarged the regulatory state. New Deal regulation had two broad themes: to bring greater overall stability to economic life, and to regulate previously unregulated industries. For the time being, at least, the forces restraining the expansion of government authority were weakened,

and the nation turned to the federal government to solve the problems of the Great Depression.

As a result of the stock market crash in 1929, the financial system was in shambles. Thousands of banks were failing, and the public was hoarding cash. Confidence in the stock market plummeted. To stem a financial panic, Franklin D. Roosevelt, on the day after his inauguration, declared a "bank holiday," closing all banks for a week. Bank panics had been a recurring problem in the era before deposit insurance, when depositors made "runs" on banks to get their money, fearing that they would lose their savings if their bank went under. Because banks loan out most of the money they have accumulated through deposits, such runs could lead to bank failures, causing depositors in other banks to worry about their own money. This, in turn, could cause additional bank runs, more panic, and more bank failures. FDR also called for a special session of Congress to consider a sweeping bank reform bill. It passed on the same day, giving the president retroactive authority for the bank holiday, and enhancing the executive branch's authority to restrict weak banks from operating. Alongside the Federal Reserve's commitment to loan money to banks that were in trouble, an informal system of deposit insurance was put in place. In announcing the reopening of banks one week later, FDR, in his first fireside chat, sought to calm the nation: "I can assure you that it is safer to keep your money in a reopened bank than under the mattress." The public responded as if it had received a shot of adrenaline, and money flooded back into banks.

Three months later, a more permanent reform passed: the 1933 Banking Act, also known as the Glass-Steagall Act. It sought to prevent reckless speculation by separating commercial from investment banking. Banks that had savings deposits (commercial banks) could no longer use those deposits to speculate on the stock market. On the other hand, banks that underwrote securities or helped arrange mergers and acquisitions (investment banks) could not take in savings deposits. (This separation was repealed in 1999, despite warnings that this would lead to a repeat of Wall Street's reckless behavior that was partly the cause of the Great Depression.)

The law also established deposit insurance. Taken for granted today, this insurance greatly increased the public's trust in the nation's banks and made a modern banking system possible. The United States was the first nation to officially establish deposit insurance. Andrew Shonfield, a British economist and one of post–World War II's leading scholars of the mixed economy, notes: "This was a peculiarly American arrangement, using public authority to underwrite the finances of the banks—the end effect being to assist them in obtaining deposits from the public more easily and on better terms than would otherwise have been possible. . . . It provides, at small public cost, the means of making money flow into enterprises for which bankers, acting unaided,

would not have been able to provide the funds."[37] In an opposite pattern from the meat inspection issue, it was the small banks that wanted deposit insurance the most, as they were the weakest, while the largest banks, which were more financially secure, opposed it, hoping that without deposit insurance, small banks would falter and the industry could be consolidated.

The New Deal also extended its reach to the securities industry—Wall Street. Rampant fraudulent stock sales had contributed to the 1929 stock market crash. To bring greater transparency to the market and replace ineffective state laws, Congress established the Securities and Exchange Commission (SEC) in 1934. To restore investor confidence, the SEC developed requirements to provide standardized, valid information for companies that sold stock to investors. In addition, it set out rules for corporate officials who were selling stock, in order to prevent trading based on insider information. Writing thirty years after the establishment of the SEC, Shonfield pointed out that "Western Europe is still groping for some means of matching the public supervision of the activities of private enterprise management which is secured in the United States."[38]

Other New Deal regulatory developments include the Federal Communications Commission (FCC), which expanded federal regulation of the broadcast industry, and the Civil Aeronautics Board (CAB), which regulated the airline industry. In each case, unfettered competition was seen as unstable, inefficient, and destructive. Regulations were put in place to control and limit competition by dividing markets among competitors. The CAB aided the airline industry by establishing a government-sponsored cartel to protect airline carriers and extend passenger service. Passenger routes were divided among airlines, and fares were subject to government approval. Only firms that received regulatory approval could operate, and rates were set to ensure profits.

While the business community did not always agree on the desirability of these types of regulation, it was united in opposition to regulations protecting workers' rights to unionize. For decades, the courts and government officials at both the local and national levels had sided with business against striking workers. Legal injunctions, the threat of jail, and the use of force were common. By the 1930s, however, industrialization had touched so many sectors of the economy that the economic downturn shook the entire nation. The era's violent protests pushed government officials to side with workers, as public sympathies were clearly on the side of the strikers and voters' allegiances became unstable. With the 1936 election on the horizon, Roosevelt endorsed the National Labor Relations Act (NLRA), which established, for the first time, that workers had a legal right to join unions, and that management had a legal obligation to bargain in good faith. More was at stake than simply workers' rights versus managerial prerogatives. Supporters hoped that broader

unionization would help address stark inequalities in the distribution in income. Unions would be able to raise workers' wages and thereby raise mass consumption (aggregate demand), stimulating economic growth. It was also hoped that a collectively bargained set of rights and procedures within the workplace would end the violence between workers and management, which had been a recurring characteristic of US labor relations. Two historians of America's violent labor history thus concluded that labor regulation was "the substitution of orderly procedures for trials by combat."[39]

In addition to the NLRA, workers won further protections from the market with the 1938 Fair Labor Standards Act (FLSA), which, for the first time, set national standards for wages and working hours. It established a national minimum wage, a maximum work week (forty-four hours), and time-and-a-half wages for overtime. This act also prohibited "oppressive" child labor by barring those younger than sixteen from the workplace, and those between sixteen and eighteen from selected dangerous jobs. After decades of often violent political conflict over these issues, the FLSA and the NLRA (also known as the Wagner Act) truly represented a new deal for the working class, as well as a fundamentally new order in the relations among workers, management, and government. By this time, the Supreme Court had changed its view of the liberty of contract and allowed both the states and the federal government to have broad authority over regulating the economy.

During the New Deal, antitrust standards were strengthened with the 1936 Robinson-Patman Act, which prohibited manufacturers from selling their products more cheaply to chain stores than to smaller retailers. Increasingly, large chain retailers had been able to obtain lower prices for goods and undersell small retailers, thereby lessening competition. The law attempted to preserve competition and protect small businesses from the economic power of national chains.

New Deal regulation also improved on programs established during the Progressive Era. The 1938 Food, Drug, and Cosmetics Act required scientific tests to be conducted before new drugs were sold. Previous efforts to require drugs be proven safe before they were put on the market had failed. It took a drug scandal that killed 107 people, most of them children, before industry opposition to meaningful regulation was overcome. In this case, a manufacturer of an antibacterial drug used a poison as part of the production process for Elixir Sulfanilamide. Graphic stories in the nation's press provided the impetus to move a bill through Congress, where it had languished. The law—the first in the world—became a model for other nations. More importantly, it transformed the practice of modern medicine. Philip Hilts, in reviewing the history of the FDA, concludes that the law was "one of the key factors that *created* the modern pharmaceutical industry and the modern use of medicines."[40]

Since drug companies would now have to produce scientific tests demonstrating a drug's safety, they had to hire thousands of scientists. This, in turn, facilitated the transformation of the industry away from its patent medicine origins, where outlandish, unsupportable claims ruled the day, to a modern industry based on scientific evidence. (It was not until 1962, however, that meaningful protocols for drug tests were established; see below.)

By the end of the New Deal, regulation had reached key sectors of the economy, including banking, transportation, Wall Street, communications, and food and drugs. Regulation attempted to preserve competition, set more-orderly rules of economic behavior, and protect the rights of workers. Bigness was largely accepted as a fact of life. The concentration of economic power in the form of trusts, unions, and large corporations, Novak argues, led to "the development of new regulatory police powers and administrative agencies that envisioned an active state apparatus as a continuous, countervailing force to the organization of new forms of economic power in modern American life."[41]

An active administrative state raised questions about the legitimacy of bureaucratic agencies making policy decisions. A simple model of agency decision makers who carried out the will of Congress no longer sufficed, in light of the broad delegations of authority made to agency officials. New Deal advocates of an expanded role for national regulation argued that these new agencies would be staffed by neutral experts who would simply carry out the law. But conservative members of the legal and business communities rejected this claim and instead believed that these officials would remain loyal to the progressive goals of the New Deal. As one historian has summed up the differences in outlook, "What the New Deal saw as technical expertise in the service of democracy, its opponents saw as big government, bureaucratic red tape, Socialistic central planning, and management by people who had never met a payroll."[42] Battles over the New Deal's expansion of regulatory responsibilities turned to rationalization of the regulatory process itself. Part of this process began with the creation of the *Federal Register*, now one of the central pillars of the regulatory state. First published in 1935, it collected the regulatory actions of the federal government in one place. Regulated parties now had one source to consult for proposed actions, and today the *Federal Register* runs to the tens of thousands of pages each year. Another feature of the rationalization of the regulatory process was the 1946 Administrative Procedures Act, which established formal procedures for bureaucratic decision makers to follow.

The Era of Social Regulation

The expansion of government authority during the New Deal did not end the debate over the reach of government regulation, nor did it end the debate over

the power of large corporations. By the 1960s, new questions arose. Were large corporations "private governments," exercising irresponsible power, poisoning the environment, and endangering the public? Or were they simply economic actors that were subject to market forces? A handful of American corporations dominated each major sector of the economy, and these firms had become the largest and most powerful in the world. As a new set of post-material, quality-of-life issues moved to center stage in American politics, the public increasingly demanded greater environmental protection and consumer safety. Regulatory responsibilities expanded like never before. Congress created new agencies that focused on issues of health, safety, and the environment, rather than the previous era's goals of industrial stability and economic growth. This focus required a different term—social regulation—to distinguish it from traditional economic regulation.

One of the first manifestations of this new era forced the pharmaceutical industry to meet meaningful scientific standards to prove that a drug was safe. In 1938, Congress had already mandated that all drugs sold in the United States had to be safe, but there were no specific guidelines dictating what evidence was required to prove that a drug was safe and effective. None of the top officials at the agency were medical doctors, and those physicians who did work for the agency did so on a part-time basis. Companies could market new drugs at any point, unless the FDA objected within sixty days of being notified that the drugs were going to be sold.[43]

All of this changed in 1962. In a pattern similar to the 1938 Elixir Sulfanilamide scandal, Congress acted to tighten drug regulations only after it was confronted with the horrible effects of a drug that caused thousands of children to be born with crippling birth defects, and thousands more to die before birth. Due to weak regulations in Germany and England, a new drug, Thalidomide, was first used as a sedative and then given to pregnant women to treat nausea in early pregnancy, even though no testing had been done on the drug's effects on fetuses. Drug companies were allowed to distribute drug samples for "experimental purposes," yet no record keeping was required of doctors or the companies. The drug was under FDA review when Dr. Frances Oldham Kelsey, a newly hired investigator, delayed its approval, due to the sloppy and weak evidence submitted. Repeatedly insisting that the manufacturer provide more information, she soon found evidence of its harmful effects on pregnant women in Europe. As the news spread, the public was shocked. Members of Congress, who had been fighting for tougher regulatory standards, redoubled their calls for more-stringent regulation, and the industry's hold over legislative reform melted away. The new law required drug companies to conduct "adequate and well-controlled investigations," which would be reviewed by the FDA. These few simple words represented a watershed in drug-approval standards. The

safety and effectiveness of new drugs would have to be proved *before* the FDA would allow them to be sold.

In the same year, the modern environmental movement was sparked when Rachel Carson's book, *Silent Spring*, was published. Its title referred to the killing off of song birds, due to widespread pesticide use. Widely read and much debated, Carson's book made the case that chemicals such as DDT were poisoning the environment. Carson's work, alongside the efforts of countless others, pushed environmental concerns high on the public agenda. On April 22, 1970 (Earth Day), 20 million Americans demonstrated, participated in teach-ins, and volunteered for cleanups in their communities. Congress adjourned, so its members could return home to their districts to join in. Virtually every public opinion poll taken at the time demonstrated growing environmental concerns. One May 1970 survey showed that 25 percent of Americans believed that "pollution/ecology" was an important national issue. Another survey, conducted in December 1970, found that pollution was regarded as "the most serious problem" facing communities.[44] The growing strength of the consumer and environmental movement was also reflected in the number of nationally oriented public interest groups that were formed at this time, including the Consumer Federation of America (1968), the Center for the Study of Responsive Law (1968), Public Citizen (1970), the Center for Auto Safety (1970), Common Cause (1970), the Center for Science and the Public Interest (1970), and the Public Interest Research Group (1970). On the environmental front, similar new groups were the Environmental Defense Fund (1967), Friends of the Earth (1969), Environmental Action (1970), the League of Conservation Voters (1970), the National Resources Defense Council (1970), Greenpeace (1971), the Sierra Club Legal Defense Fund (1971), and the Environmental Policy Institute (1972). For those groups that already existed, their membership seemed to grow overnight. For example, between 1967 and 1971, Sierra Club membership almost tripled, going from 48,000 to 130,000, while that of the Audubon Society more than doubled, reaching 150,000 members.

The surge in formal organizations and memberships came at a time of cascading social turmoil. Widespread urban riots and antiwar protests enhanced the leverage of liberal/labor groups seeking moderate reforms as political leaders sought to reduce the growing polarization of American society. The environmental movement was a beneficiary of this situation, because many in the business community saw it as less threatening than these other movements.[45] The combined effect of these new organizations, shifts in public opinion, and social disruption created new pressures for government action. With environmental, public interest, and consumer forces in the ascendant—no one knew when these forces would reach their peak—members of Congress rushed to take advantage of this fluid situation by championing new legislation.

The scale of the changes to the regulatory state, David Vogel points out, was unparalleled:

> Five new laws [concerning consumer health and safety] were enacted by the federal government during the Progressive Era, eleven during the New Deal, and a total of sixty-two between 1964 and 1979. Job safety and other working conditions were the focus of a total of five pieces of national legislation during both the Progressive Era and the New Deal; from 1960 to 1978, twenty-one laws were approved in this area. Two statutes regulating energy and the environment were enacted by the federal government during the Progressive Era, five during the New Deal, and thirty-two during the most recent period.[46]

According to another count, at least 120 regulatory programs were enacted between 1969 and 1979. The number of regulatory agencies also mushroomed. There were twenty-eight major federal regulatory agencies in 1960, and fifty-six by 1980.[47] Government expenditures for these programs rose dramatically, as well. During the 1970s, annual expenditures on the enforcement of social regulation increased almost tenfold, from $539 million to $5.36 billion, while the number of personnel staffing these agencies expanded threefold, from 3,574 to 9,707.[48]

By the end of the 1970s, landmark pieces of environmental legislation—some setting standards and others delegating authority to bureaucratic agencies—targeted clean air and water, energy efficiency, and toxic substances and waste. On the consumer protection front, new standards were put in place against adulteration and the misbranding or mislabeling of food, drugs, and cosmetics. There also were new laws prohibiting false or misleading advertising or product misrepresentation, many of which required the disclosure of relevant information. Lastly, there was a broad set of new product safety laws.

Government regulation of motor vehicles, now fifty years old, is a notable example of social regulation. Motor vehicles are safer, pollute less, and are more efficient due to government regulatory standards. Vehicle safety standards, first established under the 1966 National Traffic and Motor Vehicle Safety Act, were in large part the result of Ralph Nader's *Unsafe at Any Speed* and his unparalleled lobbying efforts. Nader's book brought vehicle safety problems to the public's attention, something that other experts and government officials had been unable to do, despite ten years of concerted efforts. In a battle that saw the nascent consumer movement take on the nation's largest industry, American automakers vehemently opposed safety standards, including even seat belts. For Detroit, government safety standards violated free enterprise, consumer sovereignty, and managerial autonomy. Authority for

setting vehicle safety standards was put in the hands of the National Highway Traffic Safety Administration (NHTSA), in order to protect the public against "unreasonable risk" through regulations that were "reasonable," "practical," and "appropriate." From time to time, Congress, frustrated by foot dragging on the part of the NHTSA, has set new standards, such as mandating that vehicles have air bags for both the driver's seat and the front passenger seat. Since 1966, dozens of vehicle safety standards that focus on crashworthiness, crash avoidance, and postcrash standards, along with improved traffic safety laws and safer roads, have saved 3.5 million lives.[49]

Government regulation has also made cars less polluting. Once again, the auto industry opposed government regulation, but the dirty air blanketing the nation's cities and the concerns from the growing environmental movement created the political momentum to require new vehicles to meet tough pollution standards. (Motor vehicles were the primary cause of urban air pollution.) According to the EPA, due to the 1970 Clean Air Act and its subsequent revisions, "compared to 1970 vehicle models, new cars, SUVs, and pickup trucks are roughly 99 percent cleaner for common pollutants (hydrocarbons, carbon monoxide, nitrogen oxides, and particle emissions)." (What this commentary fails to mention, however, is that it reflects ideal conditions for testing, not actual road conditions or the increased number of miles that are driven.) Passenger vehicles and heavy trucks are still the primary source of urban air pollution, and more than half of Americans live in areas that do not meet federal air quality standards.

Motor vehicles are also more efficient because of fuel economy standards. In response to the first "oil shock" in 1973, when gasoline prices doubled almost overnight, Congress overcame industry opposition and mandated that new cars virtually double their fuel efficiency in ten years. The 1975 Environmental Policy and Conservation Act required each manufacturer's fleet to reach a fuel efficiency average of 27.5 miles per gallon (mpg) by 1985. At the time, average fuel efficiency was only 13 mpg. As the industry regained its political footing, it was able to hold the level of these fuel economy standards in place for decades, rather than having them increase. After repeated failed attempts, in 2007 Congress finally raised standards to 35 mpg by 2020 for the fleet of all new vehicles sold. The Obama administration subsequently raised the standard to 54.5 mpg by 2025. Unlike the original fuel economy standards, however, which set the same standard for each car maker, the new standard set different targets for each manufacturer, based on the mix of vehicles sold. Thus Japanese automakers, which sell more vehicles that are fuel-efficient, have to meet higher fuel economy standards than domestic-based manufacturers, which sell less-efficient vehicles.

The Era of Deregulation and Antiregulation

As aggressive consumer and environmental groups forced their way into the regulatory process with the rise of social regulation, corporate America fought back. In 1971, the US Chamber of Commerce asked Lewis Powell, a corporate lawyer who was appointed to the US Supreme Court the following year, to suggest ways to respond to the political challenges confronting American business. In a now-famous report, Powell wrote that "the American economic system is under broad attack." He singled out Ralph Nader as the "most effective antagonist of American business." (Nader, a tireless advocate for the public interest, was instrumental in founding a number of public interest groups, such as Public Citizen, the Center for Auto Safety, the Center for the Study of Responsive Law, and the Public Interest Research Group.) Powell called for a broad mobilization of the business community, including a concerted educational effort directed at shaping public opinion by targeting the media, colleges, secondary schools, and scholarly journals. He also argued that business had to become politically mobilized: political power "must be assiduously cultivated," as well as "used aggressively and with determination." "Strength lies in organization," he wrote, "in careful long-range planning and implementation, in consistency of action over an indefinite period of years, in the scale of financing available only through joint effort, and in the political power available only through united action and national organizations."[50]

At the time when Powell was writing his report, a wide range of business-sponsored political organizations were being formed, such as the Business Roundtable, the Heritage Foundation, the American Council on Capital Formation, and the Center for the Study of American Business at Washington University. Other already-existing groups, such as the American Enterprise Institute, were rejuvenated with an infusion of money from the expanding number of conservative foundations. During the late 1970s, membership in the US Chamber of Commerce grew by 30 percent per year.[51] Meanwhile, trade associations increasingly turned their attention to politics. In 1977, for example, an average of one trade association per week moved its headquarters to the nation's capital. And the number of corporations with government affairs offices located in Washington, DC, increased from 100 to 500 between 1968 and 1978.[52] Regardless of location, virtually all beefed up their political operations.

The combined effort of corporate lobbying, think-tank-sponsored reports, and advertising shifted the debate over regulation away from the idea of protecting the public interest. Many in the public came to accept the argument that regulation was synonymous with "strangling red tape" and responsible for the economic woes that increasingly plagued corporate America: stunted

job growth, increased inflation, and weakened international competitiveness. Government regulation also limited freedom of consumer choice. The economic aspect of this argument was particularly effective when the economy faltered in the 1970s. Between late 1973 and mid-1975, the nation was plunged into the worst recession since the 1930s and simultaneously experienced record levels of inflation. Some more-moderate voices within the business community argued that regulation may not have been the *cause* of the nation's economic woes, but at the least, it was a burden that could be lifted off the backs of the nation's businesses. As the social turmoil and protests of the previous decade waned, policy makers became less responsive to public interest forces and more attuned to reviving economic growth.

Another front in the attack against regulation stressed the counterintuitive argument that safety regulation actually made the public less, rather than more, safe. For example, one leading University of Chicago economist, in an influential article published in the *Journal of Political Economy*, argued that auto safety standards made the nation's roads more dangerous because drivers, forced to buy cars with seat belts and the like, drove more recklessly as a result. When safety advocates examined the article's data, it became clear that the study was replete with errors, yet the journal refused to publish a rebuttal. For years the article was cited as proof that regulation harmed the public, because of its unintended negative effects.[53]

Opponents of regulation were also able to seize on regulations that seemed silly to almost all observers. Yet in an endeavor as vast as the regulatory state, it is not surprising that there have been decisions that were trivial. For example, in the early years of the Occupational Safety and Health Administration (OSHA), as the agency was rushing to implement new standards, it pushed through a number of voluntary guidelines, including some about toilet seats. Many seized on this as evidence that regulation, made by overzealous bureaucrats, was nothing more than unnecessary meddling in private enterprise.

By the end of the 1970s it was clear that the public interest movement was on the defensive, and that the business community had learned how to dominate the regulatory process. It was hard for public interest groups to rally public support for the technical issues placed before regulators, and they lacked the resources needed to marshal the kind of scientific and technical expertise that regulated industries brought to bear on each new issue. A 1979 Senate report made the resource imbalance issue clear: "Participation by regulated industries predominates—often overwhelmingly. Organized public interest representation accounts for a small percentage of participation before Federal regulatory agencies." Regulated industries consistently have outspent public interest groups—sometimes by as much as fifty to a hundred times in lobbying regulators.[54]

With the tide turning against regulation, an unusual alliance between liberals and conservatives criticized economic regulation as either favoring big business over the public (the position of public interest groups) or simply as interference with the market (the stance by conservatives). Free market anti-regulation conservatives targeted regulation as an example of out-of-control big government. Together, these forces argued that allowing more competition (i.e., having less regulation) would benefit consumers. As a result, the airline, trucking, telephone, and savings and loan industries, among others, were deregulated to enhance competition. Sometimes the consequences were disastrous. The deregulation of the savings and loan industry, done in steps, resulted in thousands of bank failures and a government bailout of over $100 billion (see chapter 10). And while competition was initially enhanced in other cases, that apparent competition relatively quickly turned into greater economic concentration.

With the election of Ronald Reagan, the forces calling for reduced regulation gained even more strength. If, as Reagan had contended, government was the problem that was causing the nation's economic woes, cutting regulation was the logical response. While the public seemed to endorse the broad goal of removing bureaucratic "red tape," clear majorities opposed cutting health and safety standards or weakening environmental protection. Nevertheless, the Reagan administration was undeterred, and the budgets of health and safety agencies were reduced. On the economic front, antitrust enforcement was put on the back burner, allowing corporate concentration to increase. Appointees to prominent regulatory posts were ardent opponents of the very agencies for which they now worked. White House officials also increasingly inserted themselves into the decision-making process within regulatory agencies. The Office of Information and Regulatory Affairs, within the White House Office of Management and Budget, acted as a superregulator, requiring agencies to submit information to them before proceeding to craft new regulations. This office thus acted as a back channel for companies that were upset with the direction taken by regulatory agency officials.[55]

Environmental and public interest groups viewed the election of Bill Clinton as the opening of a new era of access and influence. Vice President Al Gore had written a book on the environment, and many thought he would support stricter environmental protection. Most environmental groups, however, were disappointed with the pattern of regulation that followed. Although environmental and safety standards were not rolled back, the Clinton administration moved cautiously in using its authority, in order to placate the business community. The appointment of the head of the National Highway Traffic Safety Administration was indicative of these pro-business efforts. The administration allowed the automobile industry to veto fourteen potential nominees

before one was deemed acceptable.[56] Once in place, Clinton's appointees did nothing to address fuel economy standards, the industry's main political concern at the time, or to improve vehicle safety. Ralph Nader blasted the administration as being worse than its Republican predecessors: "Instead of applying the laws to the application of known technologies and law enforcement mechanisms that efficiently prevent casualties and reduce further this epidemic of violence on the highways [it] drove these programs backwards . . . beyond what the Reagan or Bush appointees would have dared to do."[57]

Product safety issues and environmental protection were not the only arenas where corporate America seemed to be winning the battle over regulation. The financial industry was able to dismantle the New Deal's Glass-Steagall Act, which separated commercial and investment banks. The 1999 Financial Services Modernization Act removed the firewall between banking, securities, and insurance companies. In signing the act, Bill Clinton heralded it as the dawn of a new age in financial efficiency, and "the most important legislative change to the structure of the US financial system since the 1930s." He noted that the "removal of barriers to competition will enhance the stability of our financial system."[58] Opponents of the law argued that it would create financial institutions that would be "too big to fail," and that bailouts of these corporate giants would eventually be necessary. This is exactly what happened less than ten years later. (See chapter 10 for an analysis of the deregulatory steps that contributed to the financial collapse.)

DRUG INDUSTRY FUNDING OF THE FDA

The FDA, the nation's watchdog in protecting the public from unsafe drugs, now receives a large share of its funding directly from the drug industry, thus blurring the line between the regulator and the regulated. With a budget of almost $5 billion and a staff over 10,000, the agency is responsible for rules and oversight regarding the pharmaceutical, food, medical device, and animal feed industries. Its regulations affect over 300,000 businesses within the United States and across the globe. To speed up the drug approval process, which pharmaceutical industry officials had complained about for years, Congress passed the Prescription Drug Users Fee Act (PDUFA) in 1992. This act required user fees for drug companies submitting applications for new drug approvals, and it set agency goals to expedite the drug approval process. As a condition for supporting these user fees, industry officials insisted that the FDA's base funding be kept at its then-current level, with the fees becoming a supplement to the agency's static budget. In 2016, the industry paid more than $2 billion in user fees to the FDA, accounting for 45 percent of the agency's total budget, and two-thirds of its budget for reviewing prescription drugs.

With the FDA being more dependent on the pharmaceutical industry and feeling the pressure from Congress, the results were predictable. According to a 2014 study, the time frame for drug approvals dropped from 33.6 months in 1979 through 1986, to 16.1 months in 1997 through 2002. But the number of FDA-approved drugs that were later recalled for adverse side effects or received the strictest warning labels for potentially lethal side effects increased. The rate was 21.2 percent before PDUFA was enacted, and 26.7 percent afterward. Between 1999 and 2009, 270 million prescriptions were written for drugs that were subsequently withdrawn from the market or received the strictest level of warning.[59]

A tragic example of the FDA's rush to approve new drugs occurred in 2004, when some of the nation's best-selling drugs were taken off the market due to adverse health effects. An entire class of painkillers, among them Vioxx, was responsible for thousands of deaths and debilitating health problems. One FDA official, often at odds with the agency's leaders, estimated that Vioxx, taken for arthritis pain, was responsible for between 88,000 and 139,000 heart attacks or strokes, and that 40 percent of those affected (between 35,000 and 55,000 people) died as a result. In testimony before a Senate committee, he also suggested that there were at least five other drugs on the market that needed "to be seriously looked at."[60] Many FDA employees feared that its culture had been tilted toward approving new drugs, rather than toward protecting consumers. A 2006 survey of FDA scientists by the Union of Concerned Scientists, a nonpartisan public interest group, showed a "picture of a troubled agency: hundreds of scientists reported significant interference with the FDA's scientific work, compromising the agency's ability to fulfill its mission of protecting public health and safety." Many within the agency felt pressured to approve drugs or lacked confidence that the FDA "adequately monitors the safety of drugs once on the market." Only 51 percent believed the FDA was "acting effectively to protect public health."[61] As criticism grew, the agency announced it would form a new office, the Drug Safety Oversight Board, to better analyze drug safety and communicate with the public.

Another example of the intermixing of public and private power, where industry officials essentially exercise a hold over regulation, is the National Organic Standards Board. This board, established with the passage of the 1990 Organic Food Production Act, is an independent advisory panel making recommendations to the secretary of agriculture concerning what nonorganic materials can be used in food, yet still let these products retain the organic label. Without the board's approval (by a two-thirds vote of its fifteen members), no new items can be added to what is known as the National List. By 2012, it contained more than 250 nonorganic items. Critics charged that this list reflects the interests of the large corporations that dominate the board's mem-

bership, and that these decisions violate what was intended by the "organic" label.[62]

COMPARING THE EUROPEAN UNION WITH THE UNITED STATES

Although health, safety, and environmental regulations were stricter in the United States before 1990, since that time the European Union has taken a number of steps to tighten its regulations to protect public health. For decades, the Europeans' efforts had lagged behind those of the United States, but that situation radically changed in 2006, with the EU policy known as REACH (Registration, Evaluation, Authorization, and Restriction of Chemicals). Its requirements are that all chemicals on the market have to be proven safe. While the 1976 US Toxic Substances Control Act (TSCA) had initially led the world in requiring that new chemicals be shown to be safe before they could be sold, it had one enormous loophole: all chemicals that were already on the market—some 62,000 of them—were exempt from this requirement. Even decades later, no toxicity testing has been done on 95 percent of these chemicals.[63] Hundreds of chemicals that are now banned in the European Union because they are a health threat if used in food, cosmetics, and other products are still perfectly legal for use in the United States. The European Union has also implemented a new policy on recycling and removing hazardous materials in electronics.

In general, the European Union has embraced the precautionary principle in guiding its environmental, health, and safety regulations. In contrast to cost-benefit analysis, a commonly used tool by US regulators, where efforts are made to precisely compare measurable costs and benefits, the assumption behind the precautionary principle is that it is better to be safe than sorry. As a result of stricter EU standards, US manufacturers who want to sell their products in Europe have to comply with one set of standards for the US market and another for the European Union. If these same manufacturers decide to produce one product that meets the health and safety requirements of wherever it is sold, instead of using different chemicals in their products, depending on the intended market, US consumers will be the beneficiaries of these stricter regulations.

The forty-year TSCA regime came to an end in 2016, when Congress, after decades of lobbying by environmental groups, finally revised the law. Due to the stalemate in Congress over the past twenty years, state governments had taken the initiative and restricted chemicals from products sold in their state. Meanwhile, consumers pushed retailers to not sell products containing what were considered to be toxic chemicals. Reform was finally made possible when the chemical industry decided that one set of national standards was better

than a combination of the patchwork of state laws and the growing public demand to ban certain chemicals from consumer products. After years of twists and turns, in a remarkable show of bipartisanship, the House voted 402 to 12 to approve a "modernization of the TSCA," and the Senate approved the final version of the bill by unanimous consent. The Frank R. Lautenberg Chemical Safety for the 21st Century Act closed the TSCA loophole and mandated, over time, the testing of all chemicals on the market. It required that chemicals be shown to be safe before being allowed on the market, and it replaced the use of a cost-benefit standard to guide EPA decisions with a health-based standard. It required that the most vulnerable populations (e.g., children, pregnant women, or workers disproportionally exposed to these chemicals) be protected, rather than the "average" person. It preempted future state actions, unless the EPA fails to act, but it grandfathered in state bans that were already in place. The environmental community was split over the bill. Some feared that it did not go far enough in its details, and that without adequate funding, change would be far too slow. Many toxic chemicals could remain on the market for years to come as the EPA struggled with inadequate resources. Others saw it as a historic improvement over a broken law.[64]

Regulation as a Form of the Developmental State

The regulatory state does more than protect consumer safety or set the rules for economic behavior. Regulations requiring manufacturers to develop new production methods or products create different markets, and thereby provide incentives for manufacturers to develop other products. A recent example of government regulation spurring innovative technology and transforming markets is the 2007 lightbulb efficiency standard, part of the Energy Independence and Security Act (EISA). The law requires that all general service lightbulbs be at least 27 percent more efficient than traditional incandescent lightbulbs, effectively banning the sale of these old-fashioned lightbulbs. Over time, 3 billion traditional incandescent bulbs will be replaced. (Incandescent lightbulbs are largely unchanged since they were invented by Thomas Edison 125 years ago.) The overall savings from this new standard are significant, because lighting accounts for between 20 and 22 percent of electricity consumption. This standard is intended to drive innovation in lightbulb technology, so fewer watts (and thus less energy) will be needed to produce the same number of lumens (a measure of brightness). By 2020, the standards require even greater efficiency, with a 65 percent improvement over traditional incandescent bulbs. According to the EPA, once this standard is fully in effect, there will be an annual savings of $12.5 billion in electricity costs, and tens of millions of tons of carbon emissions will be prevented.

Environmentalists and lightbulb manufacturers joined together in supporting the new standards. Environmentalists saw the benefits of reduced pollution and consumer savings. In 2010, the EPA projected that by 2015, consumers could save $6 billion by using more-efficient compact fluorescent (CFL) or LED bulbs—two technologies that were already on the market. While the newer bulbs were more expensive, consumers could save money over time, due to reduced energy usage.

Manufacturers, once again fearing a patchwork of state standards, saw the benefit of one national standard. They also wanted a more predictable business environment, to guide their investments in research and manufacturing. The industry was faced with the difficult task of changing a long-standing consumer pattern of buying incandescent bulbs. In testifying before a US Senate committee, a representative of the National Electrical Manufacturers Association (NEMA), the companies that account for 95 percent of lightbulb manufacturers, stressed the need for new efficiency standards in order to transform the market for lightbulbs:

> Given the significance of lighting in our economy, NEMA views any lighting market transformation as a matter of national importance that must come through a federal solution by setting technology-neutral, performance-based standards that would eliminate today's inefficient general service lightbulbs from the market. . . .
>
> This is not the case of manufacturers dragging their heels, but of leading the way. New standards-setting legislation is needed in order to educate consumers on the benefits of energy-efficient products. Importantly, the legislation will provide manufacturers certainty in order to schedule investments for transforming the market.[65]

Contrary to fear that the incandescent lightbulb would simply disappear, two years after the law's passage, one lightbulb market analyst noted that "there has [*sic*] been more incandescent innovations in the past three years than in the last two decades."[66] Manufacturers now had an incentive to develop a new product, because there was a predictable market. As one commentator pointed out, the new standards are "a case study of the way government mandates can spur innovation."[67]

Conclusion

Notwithstanding the tougher standards that are now being developed in the European Union, the US regulatory state is anything but weak. It remains a strong central component of modern capitalism. Indeed, without government regulation of the economy, it is inconceivable to imagine how a modern market

society could function. Polanyi argued decades ago that laissez-faire was an impossible utopia, and the historical record from the beginning of the United States to today supports his insight. In reviewing the early history of national government regulation, before its twentieth-century expansion, Novak concludes that "regulation is not something that originates historically outside of the development of a market economy (and at some later date for exogenous reasons), but is historically endemic to and constitutive of it."[68]

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68. Novak, "Revisionist History," 36.

The Developmental State

Throughout american history, government has played an essential role in spurring technological innovation and promoting economic growth. While it is now commonplace to acknowledge governmental actions encouraging macroeconomic growth, policies promoting technological innovation remain obscured and underappreciated. Yet the key innovations of the information age either benefited from direct government aid or were conceived of and developed by the national government. Government support has been instrumental in the development of, among other things, the computer, the Internet, the computer mouse, dehydrated foods, CAT scans, MRI technology, atomic energy, the global positioning system (GPS), the Siri software, and Google Earth.[1] Throughout American history, military preparedness has been the primary push behind major technological breakthroughs. Just as Charles Tilly argues that war made the state, so has war made the developmental state through its array of programs promoting technology.

The activities of the developmental state are in stark contrast to the vision of market fundamentalism—the belief that market societies function best with minimal government. Compared with the actions taken by other nations, the US developmental state has long been active—and extremely successful. Often, grants to researchers are the key, while at other times, government planners have envisioned a new technology and work with the private sector to realize these ideas. Meanwhile, government purchases of new technology have provided the necessary resources to allow companies to work on new projects. The precise boundaries of developmental state activities are difficult to draw. New regulatory standards, for example, often force the development of new technology (see chapter 7). According to Linda Weiss, principal aspects of the US developmental state have included "procuring new technology; providing assured demand for the resulting innovations; devising the technology problem sets for industry to work with; generating public interventions/intellectual property for private firms to exploit; taking equity positions in innovative firms; devising with industry new technology standards to outflank foreign competitors and so forth."[2]

As a result of these actions, she argues, since World War II, the United States has been "the uncontested high-technology hegemon, leading the world in vir-

tually all the major technologies that drive the modern economy and underpin its prosperity."[3] This dynamism did not simply grow out of the garages of individual tinkerers. It was the result of the coordinated efforts by the national security state. These efforts, led by the Department of Defense, also include activities by the National Science Foundation, the National Aeronautics and Space Administration, the Department of Energy, and the National Institutes of Health. Together, these agencies have mobilized a decentralized network of government offices, national laboratories, private companies, and university researchers for the purpose of military primacy. Due to its complexity and decentralized structure, this network functions as a "hidden" developmental state. Again and again, government officials, acting with a long-term vision, have imagined innovations, such as the Internet, that the private sector had not. While military needs have been the primary motivation for technological change, these inventions have also transformed daily life and revolutionized economic activity.

Throughout the history of capitalism, innovation has been pivotal to economic growth, which is why Joseph Schumpeter, a conservative economist, sees innovation as central to the process of "creative destruction" as new products and new ways of production restructured the economy, fueling new investments and stimulating economic activity. Disruptive innovation was at the heart of capitalist change. In large part, key disruptive changes of the twentieth century have been spurred by the military. As historian Merritt Roe Smith has written: "Whether one looks to the origins of mechanized production or the latest version of the automatic factory, one finds the imprint of military influence. Computers, sonar, radar, jet engines, swept-wing aircraft, antibacterial drugs, numerically controlled machine tools, high speed integrated circuits, nuclear power—these are but some of the best known industrial products of military enterprise since World War II."[4] (An updated list would no doubt include the Internet and GPS.) *In fact, almost all of the state-of-the art technology in the iPhone, iPod, and iPad are due to research and funding support from the federal government and the military*.[5] An examination of the role of government in shaping technological innovation shows that the array of industries, the products produced, and the types of jobs that are currently available—in other words, the nation's economic history—are in large part the product of the developmental state.

Why, then, has so little attention been paid to the developmental state and its accomplishments? In part, it is because such actions challenge the cherished myths of laissez-faire. William Novak, writing about the myth of the weak American state, notes that there has long been a disjunction between "historical perception and political reality." He cites an 1887 essay titled "The American State and the American Man," by Albert Shaw, who chided Americans for

their laissez-faire fantasies: "The average American has an unequaled capacity for the entertainment of legal fictions and kindred delusions. He lives in one world of theory and in another world of practice. . . . Never for a moment relinquishing their theory [of laissez-faire], the people of the United States have assiduously pursued and cherished a practical policy utterly inconsistent with that theory, and have not perceived the discrepancy."[6] Another factor obscuring the American developmental state is that there is no one agency responsible for developmental state projects. Instead, they are spread across different agencies or departments, as each has its own mission.

In addition, since much of public debate is framed around a simple dichotomy of government versus the private sector, there has been little attention paid to how government policies shape markets or spur technological innovation. Yet, as Karl Polanyi argues, market economies do not function autonomously. They are always and must always be embedded in political and cultural frameworks. The developmental state, which sometimes goes by the name *industrial policy*, is just one of the many aspects of government policy directed at shaping and managing market economies. Such actions do not displace the private sector, but instead seek to steer which industries or technologies exist. The late Chalmers Johnson, justly heralded for his work on Japanese industrial policy, was instrumental in bringing attention to the idea of the developmental state as the central factor behind the growth of Japan's industrial might in the twentieth century. His framework goes beyond the reductionist poles of capitalism versus communism that have dominated American discussions of political economy, but it is often seen as uniquely applicable to Japan and selected other Asian nations. William Lazonick, one of the leading contemporary analysts of innovative enterprise, argues, however, "Western scholars have entirely missed, in terms of technological innovation over the past century to the present, [that] *the US state has been far more developmental than the Japanese state*" (emphasis in original).[7] Other nations readily acknowledge that the United States engages in industry policy. For example, a 2014 European Commission report on US policies directed at stimulating innovation and entrepreneurship began with what should be obvious: "Industrial policy in the United States has played a key role in developing the innovative capacity and overall economic performance of the country."[8]

Promotion Policies of the New Nation

Developing the economy with an eye toward military needs has been an explicit goal since the beginning of the nation. In George Washington's first annual address to Congress, he justified the use of a tariff (a tax on imported goods) to protect domestic manufacturers from foreign competition, due to

the need to develop domestic manufacturers for the purpose of defending the nation during war. "The safety and interests of the people," he wrote, "require that they should promote such manufacturers as tend to render them independent of others for essential, particularly military supplies."[9] The House of Representatives then asked Alexander Hamilton, the first secretary of the treasury, to prepare a plan for the United States to become independent of other nations in terms of essential supplies, reiterating Washington's emphasis on military supplies. Hamilton understood that industrial innovation would not occur on its own. He saw a partnership between business and government as necessary for industrial modernization. A widely read nineteenth-century commentator summarized Hamilton's position: "Capital is wayward and timid in lending itself to new undertakings, and the state ought to excite the confidence of capitalists, who are ever cautious and sagacious, by aiding them overcome the obstacles that be in the way of all experiments."[10] Hamilton's *Report on Manufacturers* included advocacy of tariffs, export restrictions, and subsidies (including tax exemptions) to specific industries, as well as support for infrastructure improvements such as canals, bridges, and roads.[11] A number of industries were singled out as needing government support—iron, copper, coal, grain, cotton, glass, gunpowder, and books—because, according to Hamilton, "there is no purpose to which public money can be more beneficially applied than to the acquisition of a new and useful branch of industry; no consideration more valuable than a permanent addition to the general stock of productive labor."[12]

At both the national and state level, activities to promote or spur economic development were common. States went beyond simply promoting bridges, canals, roads, and then railroads by providing grants and other benefits. Pennsylvania, for example, invested directly in banks as well as transportation corporations. Separately, cities and counties also invested in private corporations. The practice of state and local governments investing in companies was known as a *mixed corporation*.

MILITARY-RELATED INNOVATION

While Hamilton's recommendations were not fully implemented, the national government did continue to play a key role in shaping technological development. "It is difficult," economic historian Vernon Ruttan argues, "to overemphasize the importance of the historical role that military procurement has played in the process of technology development."[13] At the same time, Merritt Roe Smith stresses that "military enterprise" was central to three of the four major aspects of technological change in the nineteenth century: interchangeable parts, machine tools, and the railroads. (The fourth, textiles, was the beneficiary of tariffs and direct purchases.)[14] Nineteenth-century Americans,

according to Smith, "expected public institutions to enter the economic arena by assuming initial risks, removing bottlenecks, and cultivating resources until private enterprise could become established on a profitable basis." For Smith, "One of the most visible agents of government enterprise was the US Army."[15]

NINETEENTH-CENTURY PRODUCTION

The army's Ordnance Department was at the center of nineteenth-century technological change. To supplement the army's arsenals, private contractors, working closely with the Ordnance Department, developed interchangeable parts, one of the greatest technological achievements of modern times.[16] Dramatic increases in production were made possible through the use of machine tools that were capable of manufacturing standardized parts. Previously, handmade weapons, such as rifles, were produced by highly skilled craftsmen, and replacement parts had to be shaped individually. Establishment of the principle of uniformity, where parts could be made according to specific, set measurements, enabled specialized machines to be developed, which then increased output. This required a massive investment in tools and equipment, something only the national government was in the position to finance.

Eli Whitney made his famous 1801 demonstration of interchangeable musket parts in the presence of President John Adams and President-elect Thomas Jefferson, but it took four decades to fully bring this innovation into practice. The army provided $2 million toward this goal. To facilitate the diffusion of knowledge, the Ordnance Department insisted that the nation's armories open their shops to visitors from civilian firms. And private companies involved in military production had to share their inventions, royalty free, with the government-run armories to continue to get government contracts.

What was called the armory practice—the use of machine tools to produce interchangeable parts—spread to industries across the nation, initially including the manufacture of sewing machines, pocket watches, railroad equipment, wagons, and hand tools. It then spread to other industries, creating items such as typewriters, agricultural implements, bicycles, and, later, gramophones, cameras, and eventually automobiles. The managerial structures and accounting techniques developed by the army's Ordnance Department also spread throughout the nation.

THE AMERICAN SYSTEM OF PRODUCTION

By the 1850s, American manufacturers led the world in modern production technology. Over time, these methods came to be known as the American system of production, "the sequential series of operations carried out on succes-

sive special-purpose machines that produce interchangeable parts."[17] By mid-century, American manufacturers, *financed, supervised, and working for the government*, had pioneered the system of production that eventually became synonymous with the Industrial Revolution. Even during the period of American history that some describe as the era of laissez-faire, the 1870s and 1880s, the navy played an instrumental role in getting steel companies (such as Midvale Steel and Bethlehem Steel) to modernize, in order to produce higher-quality steel for ship armor. Naval officials traveled abroad to obtain information about other nations' steel industries and provided financial incentives to American steelmakers. After the navy was able to obtain better steel for modern ships, a variety of civilian uses soon followed.

Infrastructure, Transportation, and Agriculture

Not all government economic development efforts have been directly tied to the military, however. Often, government's efforts have been directed toward building up the economic capacity of the nation as a whole, through infrastructure projects such as roads, bridges, and so on. At other times, trade policy has been used to protect domestic industries from foreign competition or aid US exporters. Throughout the nineteenth century, tariffs were used for the dual purpose of raising revenue and protecting infant industries from foreign competition. Tariffs raised the price of imported goods, allowing domestic industry to flourish under the shelter of its protection. From post–Civil War times through the New Deal—precisely the period of great industrialization in the United States—tariff rates were as high as 100 percent, and rarely below 40 percent.

Infrastructure projects, particularly transportation-related construction, have also been essential to US economic prosperity. National and state governments supported the building of roads, bridges, canals, harbors, railroads, airports, and highways. In the early nineteenth century, 70 percent of the investment in canals was due to government funding. Later on, government was also central to the development of the railroads. Some have estimated that 30 percent of the total investment in railroads came from the government. And in some parts of the nation, government aid reached almost 75 percent of the railroads' total funds. By the end of the nineteenth century, the railroad industry had also been given approximately 183 million acres of land, in state and national land grants. According to a 1910 congressional history of the railroads, the total value of public aid to this industry, which included the value of these land grants, came to $1.3 billion.[18] This support, Richard Bensel has argued, was one of the central aspects of the political construction of a national market in the nineteenth century. The expansion of the

railroads allowed commodity producers to compete both nationally and on world markets. The foreign exchange that was earned became essential to industrial expansion.[19]

The shipping industry and shipbuilders were also supported by the national government. Between 1847 and 1858, for example, almost $14.5 million was funneled to the shipping industry. While these subsidies were uneven during the rest of the nineteenth century, between 1891 and 1928 almost $30 million was directed to that industry.[20] Subsidies for mail carried on ships increased dramatically in the years that followed, totaling $9 million in 1929, and topping $29 million in 1934. Shipbuilders also received subsidies in the form of direct government loans.

Government aid to transportation did not end in the nineteenth century. Air transport followed a similar pattern. According to a 1940 government report, between 1926 and 1938, when the airline industry was in its infant stage, it received over $120 million in subsidies.[21] Money was also spent on airports and related services. Meanwhile, the automobile industry's centrality to twentieth-century economic history, and its dominance of ground transportation, depended on the most massive infrastructural project in US history: the 42,000-mile interstate highway system. With 210,000 lane miles built between 1954 and 2001, over $370 billion (in 2001 dollars) was spent to create these new central arteries of the nation.

Often overlooked among all these developments is the coordinated government action that transformed agriculture. Louis Ferleger and William Lazonick argue that "the contribution of federal, state, and local governments in the United States to agricultural productivity represents one of the most successful examples in modern economic history of the beneficial impact of the developmental state on a single economic sector."[22] They document how this aspect of what they call a "managerial revolution" occurred primarily through public-sector organizations. The government's role in this area was noted more than a half-century ago by Joseph Schumpeter, who wrote that the Department of Agriculture carried out what he termed an "entrepreneurial function." Farming in the United States, Schumpeter wrote, "has been revolutionized again and again by the introduction of methods worked out in the Department of Agriculture and by the Department of Agriculture's success in teaching these methods."[23] Ferleger and Lazonick conclude that those who claim that the developmental state is "foreign" to the US experience ignore this central feature of American history: "The developmental state in American agriculture was a success in introducing new technology and raising productivity in American agriculture. The developmental state has also been important in opening up and expanding global markets for US agricultural exports."[24]

Several major initiatives transformed agriculture, beginning with the 1862 Morrill Act (also known as the Land-Grant College Act), which gave each state land grants for the purpose of establishing agricultural and mechanic arts colleges. While originally geared to provide education for the "industrial classes," to raise their social standing, by the late nineteenth century the focus of land-grant colleges shifted to advancing the science of agriculture. Many of today's leading universities, such as Cornell, the Massachusetts Institute of Technology (MIT), Purdue, and Rutgers, owe their origins to or were recipients of land grants. Other major government initiatives include the 1887 Hatch Act, which provided funds for agricultural research and initiated the system of agricultural experiment stations; the 1906 Adams Act, which enhanced the subsidies to support science-based research at the experimental stations, as did the 1925 Purnell Act and the 1935 Bankhead-Jones Act (also known as the Agricultural Research Act); and the 1914 Smith-Lever Act (also known as the Agricultural Extension Act), which established a system of cooperative extension services connected to land-grant colleges.[25] Together, the US Department of Agriculture, agricultural colleges, and agricultural experiment stations transformed American farmers into the most productive in the world. (In 2015, the Agricultural Research Service, within the Department of Agriculture, consisted of 2,000 scientists and 6,000 other employees, and was involved in 750 research projects at ninety research locations, with a budget of $1.1 billion.)

World War II

In response to the unparalleled scale of World War II, the American developmental state received an enormous infusion of resources.[26] The federal government expanded its research laboratories, as well as the nation's manufacturing capacity, and became the principal funding source for basic scientific research. Fred Block labels the increase in resources directed at scientific research as the "rise of the science state." For Block, "nurturing innovation" became an important job of key federal officials, who sought to direct the process of technological change.[27]

To meet the demands for war materials, the national government financed the construction of new factories and equipment. From a 1939 base value of $39 billion for all existing industrial facilities, by the end of the war manufacturing capacity increased by an additional $26 billion, of which two-thirds was the result of direct government investment, and the remaining third benefited from tax credits.[28] In other words, the national government was responsible for expanding the nation's industrial capacity by as much as 60 percent.[29]

With the end of the war, a big question was what to do with the factories that the federal government had built, encompassing more than 90 percent of the synthetic rubber, aircraft, and magnesium industries; more than half of the nation's aluminum industry; and the bulk of the nation's machine tool industry. The magnitude of the *expansion* of the steel industry was the equivalent of the entire prewar steel industry in France or Japan. Following the pattern of World War I, when surplus ships were sold at a discount, these government-financed World War II facilities were offered to and purchased by private industry, typically at a steep discount. Many were sold for half of their value, and others for as little as twelve cents on the dollar. Often these plants were bought by companies that had operated them at a profit during the war.

Throughout the war, scientific research across the nation was directed toward the war effort. This was coordinated through the Office of Scientific Research and Development (OSRD), an independent agency within the Office for Emergency Management. This agency, headed by Vannevar Bush, a former vice president of MIT, channeled $450 million in scientific research during the war to weapons and medical research. He was widely celebrated for leading the government's scientific efforts and appeared on the cover of *Time* magazine in June 1944. The OSRD was also the umbrella agency for the Manhattan Project, which produced the first nuclear weapons.

While atomic weaponry is easily the most identifiable achievement of the war, radar and sonar were each substantially developed during that period. Another striking achievement of the wartime developmental state was penicillin, which was hailed at the time as a miracle drug. Before World War II, there was not enough penicillin to treat even one patient, but by 1945, when it was released for civilian use, over 12 billion units had been produced for the war effort.[30] Penicillin was responsible for saving countless lives, reducing the death rate for some infections from 75 to 10 percent. As the first antibiotic, it opened a line of research for others that are now central to modern medicine. An August 1944 *Life* magazine ad for penicillin—"Thanks to Penicillin . . . He Will Come Home!"—boasted that once the war was over, "the greatest news event of World War II may well be the discovery and development of penicillin." Mass production of penicillin required the close cooperation of government and private industry. As one historian notes, "the threads of collective achievement cannot be disentangled," because government, industry, and universities each played a significant role in its production:

> Penicillin was discovered in one university laboratory with the assistance of a grant from a private foundation and perfected in another university; then, under the stress of war, it was produced as a collaborative effort by

> twenty-two industrial firms in the United States under the sponsorship of the federal government, which provided subsidies. The program was spurred by the discovery in a research laboratory of the Department of Agriculture that corn steep liquor would increase the yield of the antibiotic one-hundred fold and also that one of the strains of penicillin from the laboratory would do a better job than those used before. Who then is responsible for penicillin?[31]

In reflecting on the achievements of wartime medical breakthroughs, the late Claude Pepper, then a senator (D-FL), noted, "It took a war of catastrophic dimensions to jar enough money out of the national pocket to enable medical research men to conduct their work on an adequate scale."[32]

The Postwar Period

With the end of World War II, military planners realized that warfare in the atomic age would forever be a technological contest, and that the nation with the most-advanced technology would have the upper hand. Close cooperation between military planners, the scientific community, and big business would need to be continued to maintain military superiority. Even before the war ended, President Roosevelt asked Vannevar Bush for recommendations on developing a scientific research agency that would continue the cooperation among scientists into the postwar era. His report, *Science: The Endless Frontier*, completed in 1945, outlined the importance of science and the need for a federal science agency.[33] It received tremendous media attention when it was released. *Business Week*, for example, called it "an epoch making report that is a 'must read' for American businessmen."[34]

One of the agencies that grew out of this report was the National Science Foundation (NSF). In celebrating its fiftieth anniversary, the NSF noted that half of the late twentieth century's economic growth was due to innovations in science and technology. Government grants and its own research laboratories accounted for a large share of this scientific development. For example, NSF grants account for 40 percent of the funding for basic research in the physical sciences and 46 percent of the funding for basic research in engineering that is performed at colleges and universities. NSF also supports graduate students in science, mathematics, and engineering with research fellowships. Since the inception of this program, over 50,000 graduate students have received fellowships for scientific research. By 2016, NSF-funded researchers had won 217 Nobel Prizes.[35] (The NSF's proposed budget for FY 2016 was over $7.7 billion.)

Another key turning point shaping the developmental state was the Soviet Union's 1957 launch of Sputnik, the first space satellite. Many Americans were

shocked that the United States had failed to be the first in space and were worried that the United States had lost its lead in advanced technology. In response, President Eisenhower proposed a new agency, the Defense Advanced Research Projects Agency (DARPA), run by the Department of Defense, to advance the development of new technologies. Its mission is "to assure that the United States maintains a lead in applying state-of-the-art technology for military capabilities and to prevent technological surprise from her adversaries." Today, this agency, which has only a few hundred employees, manages a $3 billion research budget, with the actual work being conducted by private researchers, primarily university and corporate scientists.

DARPA, along with the other arms of the national security state, has pumped billions of dollars into research, offering profitable contracts to technology companies as well as academic researchers. It has also created a demand for new technologies where none previously existed. In fact, many of the innovations that underlay the information economy were the result of government-sponsored programs. For example, transistors, the computer, the computer mouse, and the Internet were heavily funded by the military.[36] In fact, every major computer project in the United States between 1945 and 1955 was supported by the national government.[37] In popular imagination, however, the computer was born in the garages of innovative geeks and then developed by energetic entrepreneurs, without any governmental support. In the European Union, DARPA is recognized for its accomplishments and seen as a model for government support of technological innovation.[38]

Overall, the industrial constellation of aerospace, communications, and electronics (ACE) has long been a creature of the national security state. In fact, two scholars of the ACE complex wrote in 1992 that it "has benefited from every advantage attributed to industrial policy elsewhere—government fostering of research and development, public capital for plant construction and modernization, guaranteed markets for products, bailouts for firms in troubled periods, training funds for employee development, trade protection, export promotion, and economic adjustment for displaced workers and communities."[39]

VENTURE CAPITAL

Sputnik led the United States to directly fund firms engaged in developing new technology. In 1958, Congress established a venture capital program to stimulate investment in small, innovative, high-technology firms. Blurring the lines between public and private, these firms (under the heading of the Small Business Investment Corporation) are for-profit investment companies (known as SBICs), independently owned and run, but chartered and funded by the Small Business Administration (SBA), in order to provide capital to high-risk start-

ups.[40] According to the SBA, between 1958 and 2014, "the SBIC program has provided $73.3 billion of long-term debt and equity capital to more than 118,000 small US companies, with $5.46 billion invested in 1,085 small US companies in FY 2014 alone."[41] Its notable recipients have included Intel and Apple, Inc.

Besides jump-starting high-technology firms, the program laid the foundation of the venture capital industry. At the beginning of the SBIC program, this industry was in its earliest stage. Thus government funding and networking were instrumental in encouraging private investments. From the 1950s through the 1960s, SBICs provided two-thirds to three-quarters of all venture capital funds that went to American businesses.[42] Often, private venture capital firms invested their money after government officials had signaled their support in a promising company or technology.

Other federal agencies have also established investment programs. Beginning in 1999, the CIA, with a fund that has grown to $60 million, has used its own capital fund, In-Q-Tel, to support innovative firms. According to the CIA, In-Q-Tel is an independent, not-for-profit organization "created to bridge the gap between the technology needs of the Intelligence Community (IC) and new advances in commercial technology. With limited insight into fast-moving private-sector innovation, the IC needed a way to find emerging companies, and, more importantly, to work with them." In 2009, In-Q-Tel's portfolio was spread across eighty-nine companies. Several other federal agencies developed similar venture capital programs, including the Defense Department (2001); the US Army (2002); the National Technology Alliance (2002); the National Security Agency (2003); Department of Energy labs (2003); the US Navy (2003); the FBI, the Defense Intelligence Agency, and the National Geospatial-Intelligence Agency (2004–2005); and NASA (2006, but ended in 2007). Partial ownership in cutting-edge companies has provided government agencies with access to technologies that would otherwise have been more difficult to obtain.[43]

SHIPPING AND PRECISION MACHINE TOOLS

Alongside the revolution in information technology, two other innovations—containerized shipping and numerical controlled machines—each dramatically transformed the way the economy operates and, again, both resulted from military support. In 1952, representatives of the US Army, US Navy, and US Marines participated in a joint industry-government conference on transporting marine cargo. Concerned about the inefficiencies of loose-cargo shipping, the military wanted a more efficient method to support its operations around the world. Instead of loose cargo, loaded and unloaded by hand, a system of

containerized shipping was developed. Large cranes would then load and unload the containers onto railroad cars or trucks.[44] Container shipping, spurred by the needs of the military, transformed the entire shipping industry and became a key element in the global economy. It made possible the worldwide transportation of manufactured goods at lower costs, with millions of containers moving across the oceans each year.

Manufacturing was transformed through the development of numerically controlled machine tools. These machines produce precision parts, without the need for humans to perform many of the key tasks required. Their creation was instigated by the US Air Force's needs for precision manufacturing. Between 1949 and 1959, the military spent at least $62 million on research, development, and the transfer of numerical control technology. In the 1960s, this was heralded as the most significant innovation in production since the advent of the moving assembly line.[45] The air force created the first market for these machine tools. And now this technology and these machines are central to the production process throughout manufacturing industries in the world.

COMPUTERS AND THE INTERNET

Two of the most consequential technological developments in the post–World War II era, the computer and the Internet, were envisioned and developed with massive government support, led by the national security state, including the air force, army, navy, and DARPA. Vannevar Bush, hailed as the "architect of the American Century," is widely recognized in government, industry, and academic circles as "[making] the first major articulation of the modern personal computer, including hypertext and Internet links."[46] Efforts to realize this vision began in 1945, when the first electronic computer was built for the army's Ballistics Research Laboratory. Support from other agencies within the national security state soon followed, and within a few years, the Social Security Administration embraced the computer revolution. During the early postwar years, the United States led the entire world in computer-related research. In 1962, for example, DARPA's computer research budget exceeded those for all other nations combined. In the 1970s, defense spending accounted for half of all academic computing research in the United States.[47] To develop the field of computer science, DARPA funded the establishment of university computer science departments, including the first computer science programs at MIT, Stanford, and Carnegie Mellon, among others. From this support came the key elements within personal computers: the computer mouse, windows, desktop icons, file directories, and folders.

The Internet followed a similar pattern. During the Cold War, military planners worried about protecting their communication network from a nuclear

strike. DARPA funded university and private-sector researchers to develop a decentralized multicomputer network that could survive a nuclear attack. In 1969, the first such network (ARPANET) linked computers at the University of California, Los Angeles and at the Stanford Research Institute (an independent nonprofit entity largely funded by the Department of Defense). Other government agencies saw the benefits of the Internet and supported its development. While initially run by the military, by the 1990s it was opened to the broader public. With the widespread adoption of personal computers, commercialization quickly took off.

The global positioning system (GPS) was also a military-led development that was subsequently commercialized. Conceived of as a tool for precision targeting and the coordination of military activities, the navy and the air force provided the initial funding. Even though GPS is now available for commercial uses, it is still owned and operated by the Department of Defense.

Industrial Policy, American Style

Today's developmental state structure can be traced to the challenges posed by economic globalization and its national security consequences. By the 1970s, economic competition from Europe and Asia disrupted the postwar political economy of oligopolistic corporations that were insulated from competition. Imports hit US manufacturers of textiles, electronics, steel, autos, and more. A new term, "Rust Belt," was coined for cities such as Detroit and Pittsburgh, which were devastated by international competition. (By the 2000s, both cities had each lost half their 1960 populations.) Some argued that Japan's centralized developmental state offered a model to emulate if American industry was to be saved. All of a sudden, it seemed, calls for more government action were everywhere—within Congress, in the media, and at the White House. But during the 1980 elections, Ronald Reagan took the opposite position and argued that government was not the answer to the nation's economic problems, but was itself the problem. While his election as president seemingly ended the industrial policy debate, his administration took several major steps to enhance the government's role in spurring technological innovation and strengthening the nation's economic competitiveness. Fred Block argues that while the industrial policy debate appeared to be over, "politicians of both parties nevertheless supported a series of measures that were designed to translate the nation's science and technological leadership into commercially viable products that would be produced in the United States."[48] The type of developmental state that emerged in the 1980s—and continues today—is largely led by the national security state. Unlike Japan's centralized, bureaucratic state policy, the American version is a decentralized network. The American develop-

mental network, according to Block, helps "firms develop products and process innovations that do not yet exist, such as new software applications, new biotech medications, or new medical instruments." While the Japanese developmental state sought to help its country's firms catch up to other world-class producers, the US developmental state network "is much more 'hands on'; it involves public-sector officials working closely with firms to identify and support the most promising avenues for innovation."[49] The building blocks of the developmental network state were put in place between 1980 and 1992, with almost all of the key policies signed into law by either Ronald Reagan or George H. W. Bush. Of the eleven key policies Block identified in 2008, only two became law while a Democrat was in the White House: the 1980 Stevenson-Wydler Technology Transfer Act, which encouraged federal laboratories to collaborate with state and local governments, universities, and private industry; and the 1980 Bayh-Dole Act, which many credit with fundamentally changing the dynamics of university-based research. The Bayh-Dole Act gave those who received federal grants the right of ownership to all patents that were developed. After its passage, universities quickly established research parks as incubators of technological innovation in order to capitalize on these new rights. Today, virtually every major research university has a research park. These parks combine university and private-sector resources, seek grants, and work on technological breakthroughs. In 2002, the *Economist* magazine claimed that the Bayh-Dole Act is "probably the most inspired piece of legislation to be enacted in America over the past half century," being responsible for 2,000 new companies, 260,000 new jobs, and a $40 billion annual increase to the US economy.[50]

To strengthen innovation within the small-business sector, in 1982 Congress passed the Small Business Innovation Research (SBIR) program. It requires any agency of the federal government that offers external grants in excess of $100 million a year to set aside a percentage for small firms. This currently is at 2.5 percent, and the SBIR program provides $2.5 billion in grants annually. National security state agencies provide 97 percent of the funds. Since 1983, more than 130,000 projects have been funded, totaling over $34 billion. Linda Weiss notes that this program is the largest source of "seed and early stage funding for high-technology firms in the United States," and that "no other public investment program anywhere in the world comes close to SBIR in the scale and success of its programs."[51] Leading high-tech firms that have received funding include Amgen, Chiron, Compaq, Dell, Intel, Symantec, Titan, Qualcomm, Nanosys, and Genentech. Other legislative building blocks of the developmental state include the 1984 National Cooperative Research Act, which provided an antitrust exemption for corporations that engage in cooperative research programs, and the 1986 Federal Technology Transfer Act, which

facilitated research between private firms and national laboratories, giving firms the right to use research findings from federal labs.

In 1985, the National Science Foundation established Engineering Research Centers, a decentralized network of university-based research centers to work on concrete problems. Going further, in 1988, Congress established the Advanced Technology Program (ATP) within the Department of Commerce to provide matching grants for private-sector research efforts, in order to aid the development of new technologies. (In 2007, the ATP met its end after sustaining repeated attacks from market fundamentalists; more on this below.) In 1988, Congress also passed the Manufacturing Extension Program, paralleling the agricultural extension system, to provide local expert knowledge to help advanced-technology manufacturing. In 1991, the Defense Industrial and Technology Base Initiative Critical Technology Institutes were created to "advance the development of technologies deemed critical to US national security and economic competitiveness." The 1991 High Performance Computing and National Research and Education Network was established to protect the United States' international lead in high performance computing and networking, with $654 million initially allocated to it by the Department of Defense and the National Science Foundation. Lastly, in 1992, the Small Business Research and Development Enhancement Act allocated funds similarly to those from the SBIR program, except that the former required collaboration between small business and nonprofits, such as a hospital, university, or government laboratory.[52]

Innovation Today

Together, these broad policies amount to what Fred Block has labeled the hidden developmental state, a network of cooperation among corporations, government, and universities that has been central to the nation's capacity for technological innovation. In the past, large corporations, such as Bell Labs, had in-house research departments and were leading centers for technological innovation. Bell Labs was credited with, among other things, the first fax transmission, the first long-distance TV transmission, and the invention of the transistor and the solar photovoltaic cell. (As recently as 2001, Bell Labs had 30,000 employees, but by 2009, it had only 1,000 employees.) Today, innovations are more commonly generated from a network of university, industry, and government researchers. Block and Matthew Keller documented the shift from large in-house research departments to a decentralized network of researchers by comparing the awards given by *R&D Magazine*.[53] In 1975, for example, forty-seven out of eighty-six domestic award winners were produced by Fortune 500 companies, and forty had no outside collaborators. In contrast,

in 2006 fifty big companies were responsible for only six out of eighty-six domestic innovations, and most had partners. Altogether, all but eleven innovations that received awards in 2006 had some public financing. From this data, Block and Keller conclude that the United States has created a developmental network state, unlike the more centralized developmental state seen in Japan.

SEMATECH

A concrete example of the developmental state network was the 1980s program to help domestic producers of microchips. As more and more weapons relied on computer chip technology in the 1980s, Pentagon planners realized that too many weapons relied on imported microchips. A more competitive domestic industry was seen as vital to national security. At the same time, others worried that a competitive domestic chip industry was essential for domestic industries of all sorts that were incorporating chips into a widening range of products. In 1987, the semiconductor industry (the makers of microchips for computers) established a joint research entity, under the name Sematech, to solve common problems. As a result of the 1980 Bayh-Dole Act and the 1984 Cooperative Research Act, firms within an industry were able to establish collaborative or joint research projects. Formed by fourteen firms accounting for 80 percent of domestic production, each year $100 million in matching funds was provided by the federal government to support this effort. By 1994, when the consortium no longer needed government support and wanted to expand its focus internationally, it had received $500 million from DARPA. One history of Sematech pointed out that "they were one of the few American industrial groups to rebound from loss of their lead to Japan."[54]

THE ADVANCED TECHNOLOGY PROGRAM

Not all of the developmental state is connected to the military. In response to more-general concerns about industrial competitiveness, the Advanced Technology Program, established in 1988, spent over $2.4 billion between 1990 and 2007, funding 835 projects from 7,530 applications for what were seen as "high risk, high payoff" commercial technologies. Half of the funded projects subsequently received patents. A study of patents granted between 1988 and 1996 showed that 40 percent were given to US organizations that received ATP funding.[55] The purpose of the program was explicit: to "focus on the needs of American industry." Private industry contributed $2.2 billion toward the funded projects. Almost from its inception, however, the ATP was targeted by Republicans looking for a visible symbol of big government to attack. In

2007, the program was abolished. Republican opposition was not based on the fact that the ATP did not work. It did, but opponents worried that it gave such programs—with their partial support from government—a good name. House Republican leaders went so far as to pressure business leaders not to use ATP funding, in hopes of weakening it further.[56] One example of a technology that the program was helpful in nurturing involved developing the flat panel screens and small disk drives that allowed the consumer markets to be created for such things as iPods, TIVO, and Xbox game devices.[57] Abolishing the ATP allowed its opponents to position themselves as defenders of free markets, notwithstanding the continued existence of other developmental state programs. Without the explicit backing of national security state agencies, the ATP was always vulnerable to attack. One of the ironies of ending this program was that the legislation that did so was titled the 2007 America COMPETES (Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science) Act. At the same time that the ATP was abolished, Congress established the Technology Innovation Program (TIP), housed within the National Institute of Standards and Technology (NIST), part of the Department of Commerce, the same organizational home as the ATP. The White House press release announcing that President George W. Bush was signing the law noted that it was part of a "comprehensive strategy to keep America the most innovative nation in the world by strengthening our scientific education and research, improving our technological enterprise, attracting the world's best and brightest workers, and providing 21st century job training."[58] TIP stresses that it "supports, promotes, and accelerates innovation in the United States through high-risk, high-reward research in areas of critical national need. TIP has the agility and flexibility to make targeted investments in transformational R&D that will ensure our nation's future through sustained technological leadership."

THE NATIONAL INSTITUTES OF HEALTH

Just as the federal government's efforts were indispensable to the development of penicillin, government support—primarily through the National Institutes of Health (NIH)—continues to be central to the development of new drugs. New drugs are usually the result of scientific discoveries made outside the labs of the pharmaceutical industry, according to Arnold Relman and Marcia Angell, two former editors-in-chief of the *New England Journal of Medicine* (NEJM), one of the most prestigious and highly respected medical journals. Much of the basic research on disease is funded by the government, and it identifies promising directions for further research. Therefore, Relman and Angell argue, the pharmaceutical industry "is certainly not the major engine of

discovery and medical progress that it would have the public believe." They conclude that "publicly funded medical research is by far the major source of pharmaceutical innovation—not the industry itself."[59] Several studies have tried to sort out the contribution of government-sponsored research to the development of new drugs. In 2000, for example, the congressional Joint Economic Committee concluded: "The Federal government, mainly through the NIH, funds about 36 percent of all medical research. . . . Of the 21 most important drugs introduced between 1965 and 1992, 15 were developed using the knowledge and techniques from federally funded research."[60] (Some critics of the pharmaceutical industry have noted that the estimates on how much these companies spend on R&D cannot be verified, since the data is withheld, claimed as private corporate information.) In 1998, the *Boston Globe* reported that forty-five out of the fifty top-selling drugs at the time received $175 million in government subsidies, and thirty-three out of thirty-five new drugs had received government support for testing, discovery, or development.[61] While sorting out the relative contributions of universities, government, and industry in advancing medicine is difficult, it is clear that government has played a vital role in supporting the pharmaceutical industry and, as noted by the two former editors of NEJM, this industry is "critically dependent on government help."[62]

In 2015, the NIH's budget was $30.3 billion, with its employees spread over twenty-seven institutes and centers. More than 80 percent of its funds were expended through 50,000 grants to 300,000 researchers at over 2,500 universities and other research centers. Another 10 percent went to the 6,000 scientists working at NIH's own labs. NIH scientists and those receiving NIH grants have garnered more than 145 Nobel Prizes.

NUCLEAR POWER

Commercial nuclear power would not exist if not for the government's initiative and its continued support. Nuclear energy was originally harnessed in order to build the bombs that were dropped on Japan at the end of World War II. By 1945, the Manhattan Project, the top-secret R&D project to build the atomic bomb, cost $2 billion (approximately $26 billion in 2016 dollars) and involved about forty laboratories and factories, employing 200,000 people. After the war, the navy harnessed nuclear energy to power its submarines and aircraft carriers. The first civilian use of nuclear power—to generate electricity—was in 1957. That same year, Congress passed the Price-Anderson Nuclear Industries Indemnity Act to protect the nuclear power industry. One feature of this act limited the amount of insurance that operators of nuclear plants must carry. The other key provision limited the liability of nuclear plant

operators if a serious accident or attack should occur. As a result, investing in nuclear power was more attractive than it would otherwise have been. The Nuclear Regulatory Commission's (the government agency responsible for the nuclear power industry) own history of the Price-Anderson Act notes that utility executives argued before Congress that without liability protection, the civilian nuclear power industry would not develop. Between 1947 and 1999, direct subsidies to the civilian nuclear-power-generating industry (for research, development, and oversight activities) totaled $115 billion (in 1999 dollars). The indirect subsidy of limiting its liability brings the total amount of the federal government's subsidies to this industry up to $145 billion, which was 96 percent of the measurable federal subsidies to all forms of electricity generation during that period.[63]

SOLAR POWER

Although solar photovoltaic (PV) cells were first developed at Bell Labs in 1954, the only market where it was economically viable was aerospace, because the cost of generating electricity with this technology was 100 times the standard utility rates. Army and air force officials quickly realized that it was an ideal power source for its top-secret space satellite project. The race to dominate space accelerated after the Soviets launched Sputnik in 1957. NASA was created the following year, to conduct nonmilitary space activity, and it soon became a main market for solar cells. By 1965, NASA was using 1 million solar PV cells. Strong government demand and research support drove the cost per watt down from $300 in 1956 to $20 in 1973. During the 1970s, hundreds of millions of dollars were spent to support solar power, reaching a high of $325 million in 1980. The Reagan administration cut support for the solar power industry and, in a symbolic gesture, removed the solar panels that had been installed on the White House roof by Jimmy Carter. With lagging domestic support in the United States, Japan took the lead in the solar market. Yet the solar power industry continued to receive US government support for research, and thirteen of the fourteen top innovations in PV technology between 1980 and 2010 were developed with the help of federal money, and nine of them were fully funded by the government.[64] In 2012, there were twenty-nine federal agencies, including ones in each branch of the military, that were involved in 345 solar energy projects.[65] Writing in 2011, Chris Knight concluded that, "measured in terms of funding, diversity, or commercial impact, the US federal government has the best photovoltaic research and development program in the world."[66] Lack of support for the deployment of PV cells, however, has slowed their installation. Because there has been no coherent national implementation policy, state and local governments have sometimes filled the

void. Meanwhile, China has dominated the world in manufacturing solar panels.

NANOTECHNOLOGY

Nanotechnology is another major area of government-sponsored research. This new scientific frontier functions at the atomic and molecular levels, to a size equivalent to 1/100,000 of the diameter of a human hair. It offers the possibility of developing stronger, lighter materials, as well as specifically engineered molecules for drug delivery.

Work on the National Nanotechnology Initiative (NNI) began in the late 1990s, and funding for it increased from $225 million in 1999 to $1.5 billion in 2015, spread across twenty agencies, with the total support amounting to $22 billion. Overall, the national government has "played a strategic role in selecting the technology, mobilizing potential stakeholders, to enact a new program around that technology, and arranging a large-scale public investment in an effort to assure a commercial payoff." In 2003, when President George W. Bush signed the Nanotechnology Research and Development Act, the White House press release trumpeted: "Nanotechnology offers the promise of breakthroughs that will revolutionize the way we detect and treat disease, monitor and protect the environment, produce and store energy, and build complex structures as small as an electronic circuit or as large as an airplane. Nanotechnology is expected to have a broad and fundamental impact on many sectors of the economy, leading to new products, new businesses, new jobs, and even new industries."[67]

The United States is not alone in its support for nanotechnology. Between 2001 and 2004, sixty other nations established national programs. The largest by far remains in the United States, although, on a per capita basis, Japan and South Korea spend more.[68] The market for products that contain nanotechnology has grown quickly. By 2013, there was a $1 trillion worldwide market, of which $318 billion was for US products.[69] In 2010, the National Science Foundation estimated that over 150,000 workers were involved in nanotechnology.[70] This effort, second only to the space program in US civilian technology investment, remains hidden in plain sight, a classic example of closet industrial policy.

EXPORT SUPPORT

Meeting the challenges of economic globalization not only spurred an emphasis on technological innovation, but also pushed federal policy makers to enhance the government's capacity to aid US exporters. In 1992, Congress passed

the Tourism Policy and Export Promotion Act, which established the Trade Promotion Coordinating Committee (TPCC), an interagency task force to, among other things, "coordinate trade promotion policies" and "provide a central source of information for the business community on Federal export promotion and export financing."[71] With twenty federal government agencies included in the TPCC, it sets priorities for those agencies involved in trade promotion and proposes a unified export promotion budget to the president. President Obama raised the importance of export promotion in 2010 with his National Export Initiative. It created the President's Export Promotion Cabinet, which included the secretaries or directors of the nine key agencies of the TPCC, along with senior White House advisors. In 2008, the TPCC reported that trade promotion funding reached just over $1.2 billion.[72]

One notable example of the export support that the federal government provides is the Market Access Program (MAP), a part of the Foreign Agricultural Service of the Department of Agriculture. This program supports trade promotion activities, primarily by funding trade associations, helping them to advertise their products in other countries. Established in 1985, this program was, in part, designed to help US businesses export their products, counteracting what were seen as unfair trade practices by other nations. Previously, the federal government had simply fought to open up markets for US exporters. Now, MAP directly aids the advertising of American-made products in foreign markets. Between 1993 and 2003, MAP provided more than $1 billion to agricultural trade associations to help them market their products overseas. Some of the recipients of this program are among the most well-known names in the food industry, including McDonald's, the Campbell Soup Company, the Hershey Company, Tootsie Roll Industries, Heinz USA, and General Mills. Funding for this program totaled $173 million in 2016.

The Export-Import Bank

One of the agencies supporting US exports is the Export-Import Bank, established in 1934. It assists "in financing the export of US goods and services to international markets." The bank stresses that it "does not compete with private-sector lenders but provides export financing for products that fill gaps in trade financing. We assume credit and country risks that the private sector is unable or unwilling to accept." The Export-Import Bank provides pre-export financing; export credit insurance, loan guarantees, and direct loans to foreign buyers.

The Export-Import Bank borrows money from the US Treasury at low rates and makes loans at higher rates. In 2014, it returned almost $700 million in profits to the US government and supported $29.4 billion in exports and 164,000 jobs. Its recipients include a who's who of American big business. The overwhelming majority of support goes to the nation's largest firms and has

included Boeing, Enron, Haliburton, Mobil Oil, IBM, GE, AT&T, FedEx, General Motors, and Motorola. Yet, without a national security protector, it has become a target for conservatives in Congress wanting to prove that they are against "crony capitalism."

OPIC

Another trade-promoting agency is the Overseas Private Investment Corporation (OPIC), which, despite its name, is not a private corporation, but an agency of the national government. Established in 1969, OPIC claims that it "helps US businesses invest overseas, fosters economic development in new and emerging markets, [and] complements the private sector in managing the risks associated with foreign direct investment."[73] It does so by supplying loans, loan guarantees, and political risk insurance to US companies that seek to invest in developing nations. The insurance it provides protects US businesses against currency inconvertibility, expropriation, or political violence. The agency notes that "OPIC Political Risk Insurance provides the security and peace of mind necessary to pursue opportunities in emerging markets, places where the rules of the game can change dramatically and suddenly." OPIC has financed $200 billion in investments across 4,000 projects. It claims to have generated $76 billion in US exports and supported 278,000 jobs, all at no net cost to the taxpayers. Recipients of OPIC aid include such Fortune 500 firms as Citicorp, Enron, DuPont, Coca-Cola, GE, Motorola, Pepsi-Cola, and McDonald's.

A NEW DARPA

Modeled after DARPA, Advanced Research Projects Agency-Energy (ARPA-E), situated within the Department of Energy, was part of the 2007 America COMPETES Act. It defines its mission as, in part, "to focus on creative 'out-of-the-box' transformational energy research that industry by itself cannot or will not support, due to its high risk, but where success would provide dramatic benefits for the nation." While the legislation authorizing ARPA-E was signed by President George W. Bush, the White House was quick to express its misgivings about this agency, and it did not request any funds for it through the budget process. President Obama appointed its first director in 2009, and ARPA-E received its first funding—$400 million—from the 2009 stimulus legislation. The Obama administration's embrace of ARPA-E was guided by two goals: (1) to develop alternative energy industries to mitigate global warming; and (2) to spur domestic renewable energy job creation. In doing so, it sought to address the problem of what is called *jobless innovation*, where technological innovations made in the United States do not lead to US manufacturing, but instead are made by offshore companies. By 2016, ARPA-E had allocated

$1.3 billion across 475 projects, and these projects had attracted an additional $1.25 billion in private-sector follow-up funding.

ADVANCED MANUFACTURING INSTITUTES

Building on the DARPA model and the innovation networks that had developed since the 1980s, the Obama administration initiated a nationwide network of advanced manufacturing hubs in order to address the collapse in manufacturing employment in the United States. Throughout the decade of the 2000s, thousands of US factories closed and millions of jobs were lost, while productivity increases lagged behind those of other nations. Industry leaders and a range of think-tank reports called for the federal government to promote manufacturing and, in particular, manufacturing innovation. One of the elements of the Obama administration's efforts was a program that included a network of regional public-private hubs, "each focused on a unique technology, material, or process relevant to advanced manufacturing."[74] This specific proposal grew out of a June 2011 report by the President's Council of Advisors on Science and Technology (PCAST), an advisory body of business and university scientific experts that had its origins in the New Deal.

Stressing that the nation's historic leadership in manufacturing was "at risk," the report noted that the United States was no longer the world's leading producer of manufactured goods, as it had been from 1895 to 2009. Manufacturing jobs, once a key foundation of the middle class, had plummeted from 17.6 million in 1998 to 11.6 million in 2009. (In contrast, from 1965 to 2000, the number of manufacturing jobs had remained relatively constant.) The loss of jobs was not limited to low-cost products, such as textiles, that were unable to compete with cheaper-priced imports. The decline, the report stressed, "extends to advanced technologies invented in the United States, and is not solely due to low-wage competition." There was a widening trade deficit in advanced technology, because the United States was losing the "knowledge, skilled people, and supplier infrastructure" that is required to produce a range of advanced technologies. Without the ability to maintain a lead in innovation, future economic development was threatened. The report also warned that a manufacturing base with the capacity to preserve our technological edge was vital to national security.[75]

William Bonvillian, a former congressional staffer and leading scholar of innovation policy, has emphasized the importance of manufacturing to the United States. It contributes $1.7 trillion to the economy, provides higher wages than nonmanufacturing jobs, and has a higher jobs-multiplier effect than other sectors. But most importantly, Bonvillian notes, economists have estimated that 60 percent or more of historic US economic growth has been the result of

technological development and related innovations, with manufacturing dominating the innovation system. The downturn in US manufacturing jobs, he argues, is a substantial cause in the decline of the American middle class. Failing to take steps to keep manufacturing in the United States will exacerbate jobless innovation, which is a cause of rising inequality. Only the highly educated will be in a position to have jobs in the R&D stages of production, at least in the short run.

Since modern manufacturing requires more and more R&D, and since there are synergies between R&D and manufacturing, unless manufacturing remains in the United States, R&D jobs (which are highly skilled and highly paid) inevitably will be lost. As a result, Bonvillian warns, the nation's innovation infrastructure will collapse, something he says is already starting to occur. Amazon's Kindle reader, for example, could not be made in the United States, even if Amazon had wanted to, because key elements are no longer produced here. Every mobile/handheld device is now manufactured in Asia. Bonvillian also stresses the national security implications of not continuing to support technological innovation: "The failure of the United States to understand the geopolitical realities of leadership in world production potentially jeopardized the pillar on which we have built our national security advantage for the past eighty years—technological leadership."[76] Other countries, meanwhile, have been "investing heavily" in their manufacturing sector, with their national agencies promoting domestic industry and technological innovation. By 2015, fifty of the world's nations had developed national innovation agencies.[77]

The PCAST report stressed that market failure limited the development of new technology, due to uncertain returns on investment. To overcome this barrier, a system of regional public-private manufacturing innovation partnerships, focused on specific technologies or processes, is needed to create an industrial commons, or ecosystem, of knowledge, supply chains, and a skilled workforce. This idea was modeled on the German Fraunhofer Institute for Systems and Innovation Research and the success of Sematech. The PCAST report was careful to preempt critics who would attack the proposal as industrial policy, something supposedly antithetical to the American tradition of the free market: "We do not believe that the solution is *industrial policy,* in which government invests in particular companies or sectors. However, we strongly believe that the Nation requires a coherent *innovation policy* to ensure US leadership support new technologies and approaches" (emphasis in original).

In 2012, President Obama announced a plan to invest $1 billion for as many as fifteen regional manufacturing hubs. A pilot program for additive manufacturing (3D printing), bringing together forty companies, nine research universities, five community colleges, and eleven nonprofit organizations, was launched

in Youngstown, Ohio. As the lead funding agency, the Department of Defense provided $30 million while the private sector contributed $40 million. The following year, Obama called for three more regional innovative hubs, and Congressman Tom Reed (R-NY) introduced a bill that led to the Revitalize American Manufacturing and Innovation Act, establishing a national manufacturing innovation program. Universities, manufacturers, local communities, trade associations, and business lobbying groups, such as the Business Roundtable and the National Association of Manufacturers, lined up in support. In an uncharacteristic show of bipartisanship, the bill gathered fifty Republican and fifty Democratic cosponsors and passed in the House by a voice vote in 2014. It eventually became part of an omnibus spending bill. Republicans required that there be no new funding for the program, but they allowed transfers of funds from other programs; its funding authorization was set at $300 million.[78] The secretary of commerce was responsible for coordinating the program through the National Institute of Standards and Technology (NIST), an agency whose origins go back to 1830. For each hub, private funds needed to be at least equal to the federal contribution, and, after an initial five- to seven-year period, each institute had to become self-sustaining. Awards were to be based on competitive bids. Overall, the goal was to address precompetitive technical and workforce obstacles to a scaling up of new technologies and products, in order to facilitate full commercialization by domestic manufacturers.

By mid-2016, there were eight regional manufacturing innovation institutes operating. A ninth institute, focused on smart manufacturing and advanced sensors and processes controls, was being developed. A number of others were in the initial planning stages. More than 147 research projects, funded by either the Department of Defense or the Department of Energy, were in the works. Once again, national security interests were a prime, if not widely acknowledged, driver of many of these research projects.

The six Department of Defense–funded institutes are:

- *America Makes, the National Additive Manufacturing Innovation Institute*, Youngstown, Ohio, focusing on additive manufacturing/3D printing technologies.
- *Digital Manufacturing and Design Innovation Institute*, Chicago, Illinois, focusing on integrated digital design and manufacturing.
- *Lightweight Innovations for Tomorrow*, Detroit, Michigan, focusing on lightweight metals manufacturing technology.
- *AIM Photonics—American Institute for Manufacturing Integrated Photonics*, Rochester, New York, focusing on integrated photonic circuit manufacturing.

- *NextFlex, America's Flexible Hybrid Electronics Manufacturing Institute*, San Jose, California, focusing on the manufacturing and integration of semiconductors and flexible electronics.
- *Revolutionary Fibers and Textiles Manufacturing Innovation Institute*, Cambridge, Massachusetts, focusing on revolutionary fibers and textiles manufacturing.[79]

The two Department of Energy–funded institutes are:

- *PowerAmerica—The Next Generation Power Electronics Manufacturing Innovation Institute*, Raleigh, North Carolina, focusing on wide-bandgap, semiconductor-based power electronics.
- *Institute for Advanced Composites Manufacturing Innovation*, Knoxville, Tennessee, focusing on advanced fiber-reinforced polymer composites.

One of the 2016 institutes, the Revolutionary Fibers and Textiles Manufacturing Innovation Institute, which was funded by the DOD and organized by MIT, brought together fifty-two companies and nonprofit organizations, thirty-two universities/colleges and other schools, and five state governments or regional organizations and was financed with $75 million in federal funds and $250 million in nonfederal funds. As part of the broader trend of the "internet of things," where sensors and computing are added to all types of equipment to monitor their activity, the Department of Defense announced that this institute "will bring together nontraditional partners to integrate fibers and yarns with integrated circuits, LEDs, solar cells, and other capabilities to create textiles and fabrics that can see, hear, sense, communicate, store energy, regulate temperature, monitor health, change color, and more."[80] Beyond the applications for safety equipment and body armor, the institute's civilian director claimed that "this is about reimagining what a fabric is, and rebirthing textiles into a high-tech industry."[81] The project hopes to reverse the loss of jobs in the US textile industry and create 50,000 new jobs in ten years.

Conclusion

The developmental state has been an important feature of American government from the nation's earliest beginnings up to the present. Several factors have fueled these policy initiatives: the need to advance military technology; the desire to support domestic industries for the purpose of economic expansion; and the drive to meet the challenges of global competition. This support has been so central that, from agriculture to machine tools, from information technology to manufacturing, and from energy generation to pharmaceuticals,

it is virtually impossible to disentangle the role that government help has played in making these industries what they are today.

Notwithstanding the endlessly repeated rhetoric about free enterprise and limited government, the US economy has always been intertwined with ongoing government support. Its technological leadership owes much to these efforts, a leadership that stands at odds with market fundamentalism.

Notes

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21. Ibid., 106.

22. Louis Ferleger and William Lazonick, "The Managerial Revolution and the Developmental State: The Case of U.S. Agriculture," *Business and Economic History* 22, no. 2 (1993): 69.

23. Joseph Schumpeter, "Economic Theory and Entrepreneurial History," in Richard Clemence (ed.), *Essays on Economic Topics of J. A. Schumpeter* (Port Washington, NY: Kennikat Press, 1951), 255.

24. Ferleger and Lazonick, "Managerial Revolution," 94.

25. Ibid., 76, for details on each of these acts.

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The Moral State

Controlling intimate personal behavior has been a central feature of American government from the beginning of the nation. The history of the moral state is one of a strong, active, interventionist state, at odds with the notions of atomized individualism and limited government.[1] Regulation of pornography, bans on access to information concerning birth control, the criminalization of abortion, penalties for fornication and sodomy, and the prohibition of alcohol and drugs have a long history in American law. Unlike other aspects of state power that have grown throughout the twentieth century, as civil liberties have been on the march since World War II, aspects of moral regulation have been in retreat. Moral regulation was at its strongest before the New Deal, when supposedly the American national state was at its weakest.

Compared with other industrial nations, the United States has had stricter moral laws. The drug war (see chapter 6) and the punitive nature of criminal law have led to harsher and stiffer penalties, and a greater percentage of the population behind bars, than in any other nation. Battles over gay marriage, birth control, and drinking have been more prominent in the United States than in other industrial democracies. Moral regulation involves those issues of personal behavior that are often known as *victimless crimes*. In large measure, these issues tend to involve sex (in its myriad forms and aspects) and drugs, including alcohol. Censorship battles have been permeated by fears of uncontrolled sex.

The issue of moral regulation, long the preserve of constitutional law scholars concerned primarily with the evolution of legal doctrines, has largely escaped the attention of those studying the development of the American state. The extensive literature on American exceptionalism, emphasizing the weak and limited reach of the American state, has ignored moral regulation. Even those scholars who have recently come to see the American state as stronger than previously thought still overlook the history of moral restrictions.[2] Yet moral regulation has been a significant factor in strengthening state power and its reach into social life. Federal criminal law doctrine was transformed by the challenges of enforcing Prohibition, and institutions such as the FBI gained their organizational footing in enforcing the nation's sex laws. Before the US Supreme Court legitimated national regulatory authority during the New Deal,

it allowed an expansion of the regulation of morals, paving the way for the modern national state.

Most scholars have ignored the moral regulatory activities of the national government, because state and local governments have been the primary makers and enforcers of moral regulation. For example, Theodore Lowi, in a widely embraced typology of government authority, fails to mention moral regulation as an aspect of the national government. Yet, throughout much of the nineteenth and early twentieth centuries, Congress was actively engaged with moral regulation on such topics as alcohol, gambling, polygamy, marriage and divorce, obscenity, purity and prostitution, Sunday observation (activities limited or proscribed on Sundays, as opposed to other days of the week), narcotics, cigarettes, prizefighting, and the "Christian amendment" (to put explicit references to God in the Constitution). Between 1841 and 1921, 1,538 bills that involved morals were introduced in Congress, of which 102 became law.[3]

James Morone, who has done more than anyone else to bring attention to the enduring moral fervor in American political history, argued that moral campaigns, while not the only spur to public policy, are "surely the most often overlooked."[4] For Morone, during the fifty years after the Civil War, a new role for government developed: "Moral reformers banned bad books, barred birth control, outlawed abortion (which was common after the Civil War), raised the age of sexual consent, demolished red-light districts, prosecuted dangerous anti-family ideas, forbade men with immoral fancies from crossing state lines, and—at the high tide of virtue politics—outlawed the sale of alcohol."[5] To this list one might add the stricter enforcement of sodomy laws, including legislation that swept the states in the early decades of the twentieth century, outlawing oral sex.[6] Such crusades sought to renew the moral fiber of the nation, in response to waves of immigrants and the resulting social and economic turmoil of a newly industrializing nation.

A government that regulates the types of sexual activities that are allowed, or limits access to birth control and abortion, or legislates whether alcohol or drugs can be consumed, or controls what is allowed in books and movies, is anything but limited in scope. In the nineteenth century and earlier, the regulation of morality was broadly accepted as a normal attribute of governmental authority. Thus, as historian William Novak argues, "the regulation of morality and a more general concern for order, ethics, good manners, respectable habits, and standards of decency" were routine aspects of public responsibility, and "a well-ordered state of society depended upon a due regard for public morals."[7] Until the mid-twentieth century, individual liberties and rights were largely minor aspects of constitutional law. Before World War II, such liberties were largely understood in economic terms: the right to join a union, to strike, to employ child labor, and so on.

The power to regulate morals derived from what is known as *police power*: the inherent power of the state to establish rules and regulations for a well-ordered community. Police power has little to do with how we understand that term today: the power of governmental authority to capture, arrest, and detain criminals. A late-nineteenth-century legal scholar described "police power" as "the inherent plenary power of a state . . . to prescribe regulations to preserve and promote public safety, health, and morals, and to prohibit all things hurtful to the comfort and welfare of society." Thus, in 1817, a Maine judge supported the prosecution of traveling on Sunday (the Christian sabbath) by declaring that "all society is founded upon the principle that each individual shall submit to the will of the whole."[8]

Colonial Regulation

Following English common law, the early American colonies were anything but islands of individual liberty. Strict moral codes were in place. Immoral acts were seen as a threat to public safety and welfare. Not only were these acts considered harmful to the individual offender, but they were also offensive to God, who could punish society as a whole if such acts were allowed.[9] Fearing divine retribution, the early colonists took repeated actions to cleanse their communities. Virginia, for example, passed more laws regulating public morals than any other type of offense. Throughout the colonies, there were laws prohibiting drunkenness, fornication, adultery, blasphemy, bastardy, swearing, sodomy, rape, gambling, the use of profanity, and the failure to observe the (Christian) sabbath. Penalties were often severe. For example, in 1648 Massachusetts made adultery punishable by death for both parties, although this penalty was rarely imposed. Fornication, which today is seen by most people as an aspect of individual liberty and the last thing the criminal justice system should be concerned with, was punished by a fine, corporal punishment, forced marriage, or all three.

The American Revolution did not change the country's strong drive to legislate moral order. In the mid-nineteenth century, state criminal codes contained an extensive range of moral offenses, including the following:

> sexuality and [lack of] chastity (adultery, fornication, solicitation, incest, bigamy, polygamy, bestiality, and sodomy—'the horrible crime not named among Christians'), obscenity and lewdness (keeping bawdy houses, publishing obscene prints and writing, obscene speech, indecent exposure, and all other acts of 'gross and open lewdness'), [offenses against] Christianity (Sabbath breaking, profane swearing, blasphemy, and corpse stealing and dissection), and public houses and shows (common gaming

houses, disorderly alehouses or inns, mountebank stages, cockfighting and 'every public show and exhibition which outrages decency, shocks humanity, or is contrary to good morals').[10]

Initial Battles over the Mail

One of the new national government's first battles over morals involved whether the mail could be delivered on Sunday. (Boston's strict enforcement of the Christian sabbath included penalties for a range of activities, among them a prohibition on watering one's horse in public.) One historian described the battle over Sunday mail delivery as the first confrontation between church and the national state.[11] In the end, the desire for mail delivery overcame religious objections, and the mail went through. Mail delivery also sparked battles over the acceptability of objectionable content of what was sent. In 1835, when abolitionist materials were mailed into the South, opponents claimed that these items would encourage violence. Despite President Andrew Jackson's support for censoring this material, Congress failed to prohibit it from being sent. Southern postmasters, however, simply refused to deliver these materials. Censoring pornography was easier. In 1842, an amendment to the Tariff Act authorized customs officials to confiscate the "importation of all indecent and obscene prints, paintings, lithographs, engravings, and transparencies." Without any widely known domestic producers then, this ban effectively blocked access to all such materials, at least for the time being.

Polygamy

Beginning in the 1850s and continuing until 1890, Congress fought the Mormon Church over the practice of polygamy. The Church of Jesus Christ of Latter-Day Saints was started in 1830, and its founder, Joseph Smith, was alleged to have begun practicing polygamy in the 1840s, but it was not until 1852 that the church officially announced its belief in "plural marriage." Congress took its first step against this practice two years later, when a bill to give each white male resident in what was then Utah Territory a portion of federally owned lands precluded those who practiced polygamy. One member of the House of Representatives stated during the debate that polygamy was "a great, moral, social, and political evil." Another member saw the bill as something that could "nip this evil in the bud for the sake of morality, religion, and Christianity."[12] Even representatives from the South, who were worried about the extension of national power into a state's affairs, condemned the practice of polygamy for its "licentiousness."

In 1856, the Republican Party platform called for the abolition of "those twin relics of barbarism—polygamy and slavery." More than just a concern for licentiousness was at the heart of the condemnation of polygamy; underage and coerced marriages were seen as inherent polygamous practices. Once the South seceded from the Union, freeing the exercise of national authority, Congress outlawed polygamy, with penalties of up to five years in prison for those convicted of this practice. Polygamy was described as "moral pollution."[13] After the Civil War, Congress stripped the power of local judges to hear cases concerning polygamy, since they were not enforcing the law, and instead gave this power to federal judges.[14] The US Supreme Court endorsed the battle against polygamy when, in 1878, it ruled that a ban on polygamy was not a violation of religious freedom.[15]

Nonetheless, polygamy continued. In response, in 1882 Congress banned "unlawful cohabitation," so it was no longer necessary to prove a "legal marriage" for polygamy to be prosecuted. Polygamists were also barred from serving on juries and from holding public office. In 1885, the US Supreme Court once again made it clear that Congress had the authority to take measures necessary to stop polygamy, and that polygamy was a violation of the nation's moral order.[16] Two years later, Congress disenfranchised all polygamists. It also made any marriage not officially recorded a felony, required plural wives to testify against their husbands, made it more difficult for members of the Mormon Church to immigrate to the United States, and provided a process for the church's property to be taken.[17] In upholding the law, the US Supreme Court noted that the Mormon Church had "maintained the unlawful and immoral practice and doctrine of polygamy."[18] When members of Congress threatened to strip Mormons of American citizenship, church leaders officially ended Mormonism's condonement of polygamy. As a result, Congress accepted Utah's petition to become a state, which had languished for decades.

Expanding Obscenity Regulation

During the Civil War, the US Post Office became formally involved in censoring obscenity. According to the postmaster general, soldiers were receiving "great numbers" of pornographic materials. (Foreign sources were no longer the only problem.) In 1863, the postmaster general admitted that he "excluded from the mails obscene and scandalous printed matter on exhibition of its criminal immorality."[19] In 1865, Congress passed the first explicit guidelines on postal censorship:

> That no obscene book, pamphlet, picture, print, or other publication of a vulgar and indecent character, shall be admitted into the mails of the

> United States; any person or persons who shall deposit or cause to be deposited, in any post-office or branch post-office of the United States, for mailing or for delivery, an obscene book, pamphlet, picture-print, or other publication, knowing the same to be of a vulgar and indecent character, shall be deemed guilty of a misdemeanor, and, being duly convicted thereof, shall for every such offense be fined not more than five hundred dollars, or imprisoned not more than one year, or both, according to the circumstances and aggravations of the offense.[20]

Three years later, material on lotteries was added to the list.[21]

The Progressive Era

Morals crusades pervaded all levels of government—local, state, and federal—from the 1870s until they reached their peak fifty years later, with a constitutional amendment mandating Prohibition nationwide. "Purity" reformers, local civic groups, and national lobbyists targeted a wide range of issues, including pornography, indecency, contraception, the consumption of alcohol, prizefighting, lotteries, drugs, consensual sex outside of marriage, prostitution and red-light districts, sodomy, and sterilization.[22] The brothel and the saloon became the twin objects of the moral crusades that dominated many reformers' minds.[23]

Urban growth, immigration, and industrialization each contributed to a changing social landscape and the belief that the nation was suffering a moral crisis. Many in the purity movement also feared that "lower-class immorality" would infect the "better classes." Civic commissions studied each of these problems, municipal efforts to address them proliferated, and policy makers in Washington, DC, joined the fight. Rather than thinking that the reach of government should be limited, moral degradation was a problem for government to solve. Nevertheless, other reformers and more-radical critics argued that these same problems were the result of poverty and social dislocation, not just moral failings. Those who fought against censorship or Prohibition were overwhelmed by the forces who were convinced that a moral crisis pervaded the nation. Government power was used to make citizens "good," rather than merely stopping activities that harmed others, a far cry from the limited night-watchman state, where its primary function was to maintain law and order.[24] The American moral state grew, therefore, in order to meet the challenge of moral degeneration. "The purity crusaders," James Morone emphasizes, "rolled over formidable barriers—states' rights, southern discomfort, constitutional scruples, private property, business interests, and fears of government power."[25]

The moral crusades of the Progressive Era were anything *but* progressive, if that term describes expanding government authority to protect individuals from concentrated economic power, such as business regulation, or related efforts to combat corruption in government. Instead, the moral crusades of this era sought to impose social control and limit freedom, in an attempt to strengthen the social order. "Everything," historian Paul Murphy writes, "from expanded censorship laws and anti-prostitution and drug laws, to espionage legislation, criminal syndicalism statutes, sedition laws, and restraints on individual rights, were all designed to protect the community or the nation from forces and individuals threatening its moral preservation and social health."[26] While largely forgotten today, the eugenics movement was also widely supported by Progressive reformers, and forced sterilization was part of the movement's efforts, justified in the name of science, to improve the genetic stock of the nation.

CENSORSHIP AND THE COMSTOCK ACT

The most significant step in the enlargement of moral regulation in the late nineteenth century concerned the censorship of books, pictures, and other publications. Although censorship of sexually related materials can be traced as far back as 1668, there were few legal cases during the nineteenth century.[27] In 1873, Congress strengthened postal restrictions to combat the increasing availability of such materials. The central figure spearheading this effort was Anthony Comstock, a leader of the New York Society for the Suppression of Vice. He served, in essence, as the nation's chief censor in his position as a postal inspector for forty-two years, until his death in 1915.

While serving in the Union army during the Civil War, Comstock was appalled at the indecent and pornographic materials soldiers were receiving in the mail, as well as by the prevalence of prostitutes. After the war, he was further inflamed by open prostitution and obscene literature, both of which were readily available in New York City. As he sought to have the laws that were in place more strictly enforced, he came to the attention of prominent members of the Young Men's Christian Association (YMCA), who created the New York Society for the Suppression of Vice (NYSSV) in 1873. Almost immediately, Comstock turned his attention to gaining support from the federal government after the prosecution of an "obscene" newspaper account of an affair was dismissed, due to a loophole in the postal censorship law that failed to include newspapers. He quickly succeeded in getting Congress to join the effort to stamp out vice. In 1873, federal lawmakers passed "An Act for the Suppression of Trade in, and Circulation of, Obscene Literature and Articles of Immoral Use," which immediately became known as the Comstock Act. This law prohibited

importing obscene materials, using the US mail to send obscene materials, or using the mail to advertise these materials. It also provided for the destruction of anything that was confiscated. Beyond tightening the 1865 postal statute on the issue of obscenity, the Comstock Act expanded the reach of the national government into the issue of abortion and contraception by banning such information, and related products, from the mail. For the first time, mailing birth control devices was a federal crime.

The new law's reach was broad and detailed:

> That no obscene lewd or lascivious book, pamphlet, picture, paper, print, or other publication of an indecent character or any article or thing designed . . . for the prevention of conception or procuring of abortion, nor any article or thing intended or adopted for any indecent immoral use or nature nor any written or printed card, circular, book, pamphlet, advertisement, or notice of any kind of information, directly or indirectly, where, or how, or of whom, or by what means, either of the things before mentioned may be obtained or made . . . shall be carried in the mail.[28]

Violations could be punished by fines up to $500 and by up to ten years in jail doing hard labor. Since the postal system was a primary means of communication at that time, postal censorship was a dramatic restriction on access to information on abortion and contraception, and access to birth control devices.

Immediately after the act was signed into law, Comstock was appointed as a special agent of the US Post Office. Within a year, he had confiscated a prodigious amount of forbidden materials: 130,000 pounds of books, 194,000 pictures and photographs, and 60,300 rubber articles used for "immoral purposes" by both sexes.[29] In 1913, he boasted of having destroyed 160 tons of obscene literature.[30] Other accounts suggest that he was responsible for seizing 50 tons of books and 4 million pictures, as well as being the instigator of 4,000 arrests and more than 15 suicides.[31] He justified his efforts by stating that appeals to lustful thoughts were at the root of the nation's crimes: "*Lust is the boon companion of all other crimes*. There is no evil so extensive, none doing more to destroy the institutions of free America. It sets aside the laws of God and morality; marriage bonds are broken, most sacred ties severed, State laws are ignored, and dens of infamy plant themselves in almost every community, and then reaching out like immense cuttlefish, draw in, from all sides, our youth to destruction" (emphasis in original).[32]

Comstock also wrote that obscene materials and birth control devices lead their users down an immoral path. Thus he sought to confiscate books, pictures, and photographs that were "designed and cunningly calculated to inflame the passions and lead the victims from one step of vice to another, ending in utmost lust. And when the victims have been . . . thus prepared . . . the

authors of their abasement present a variety of implements by the aid of which they promise them the practice of licentiousness."[33] Comstock, as well as other purity reformers of the day, were also concerned that the use of birth control devices would encourage promiscuity and prostitution. He viewed condoms as "articles for immoral purposes."[34] Obscene materials and birth control information and devices were linked to a larger effort to "inflame the passions." (The use of condoms had increased dramatically after the Civil War, in part due to lower prices. While a dozen condoms cost five dollars before the war, by the 1870s this had dropped to seventy-two cents.)[35] As a result, Comstock and others believed that the nexus between sex, marriage, and childbearing would be weakened. Comstock battled birth control advocates such as Margaret Sanger, and he personally arrested her husband after she had fled the country in fear of prosecution for distributing birth control information among the immigrant communities in Brooklyn.

To capture his prey, Comstock used decoy letters and other tricks. (The US Supreme Court had limited the opening of sealed mail.) Comstock was also a New York City deputy sheriff, and he enforced both state and federal laws. In addition, the enforcement of obscenity statutes involved what James Morone calls "an intricate public-private partnership." The antivice societies "selected the cases, made the arrests, [and] prepared the prosecutions."[36] In 1873, the NYSSV received a charter from the New York State legislature that allowed the organization to keep half of the fines imposed on individuals it helped to convict.[37] George Bernard Shaw, the Irish playwright and 1925 Noble Prize winner, used "Comstockery" to criticize censorship of perceived obscenity or immorality, a term that survives today. In 1905, Shaw wrote: "Comstockery is the world's standing joke at the expense of the United States. Europe likes to hear of such things. It confirms the deep-seated conviction of the Old World that America is a provincial place, a second-rate country-town civilization after all."[38]

Purity reformers were not content to stop here. They also pushed to raise the legal age of consent for sex. Between 1886 and 1895, thirty-five states had done so. Meanwhile, 4,000 local governments set curfews.[39]

The Comstock Act's prohibitions on obscenity started to break down by the 1930s. The prohibitions on abortion and birth control, however, were more lasting. They still had their effects felt 100 years after they were passed. It was not until 1970 that Congress removed references to contraception from federal statutes against obscenity. It was only in 1965 and 1972, respectively, that the US Supreme Court struck down state bans on the use of contraceptives, first for married couples and then for unmarried couples. The court did not lift bans on abortion until 1973.

THE MANN ACT

The Progressive Era war on vice extended well beyond control over reading materials or birth control devices. In 1910, Congress passed the White Slave Traffic Act, also known as the Mann Act, named after its primary congressional sponsor, Republican James Mann, from Chicago.[40] The law prohibited transporting, inducing, or aiding any woman to cross state lines "for the purpose of prostitution or debauchery, or for any other immoral purpose." Violations of the law occurred if state lines were crossed with the *intention* of engaging in sex, whether or not actual sexual activity took place. Due to its vague language ("any other immoral purpose"), this law was soon applied to noncommercial, consensual heterosexual sexual relations outside of marriage. While the law's primary target was the interstate transportation of prostitutes, for the next fifty years couples who were not married and crossed state lines with "immoral intentions" also ran afoul of the law.

The origins of the Mann Act were rooted in growing worries about prostitution. Widespread concerns in the United States and elsewhere over the traffic in young girls and women had led to international conferences in Paris in 1899 and 1902. From these meetings, an international accord was reached that sought to ban sex trafficking. This agreement was subsequently ratified by the US Senate in 1905. In America, magazine articles across the country portrayed prostitution as a leading symbol of moral decline. Local civic groups, marching under the purity banner, sought to stamp out red-light districts, instead of regulating or tolerating such districts, as had been the case.

While prostitution was not uncommon, the Mann Act was cloaked in racial animus and fears of sexual debauchery. Waves of immigrants were blamed for bringing women to the United States for the sole purpose of prostitution. Russian Jews in particular, and, to a lesser extent the French, were singled out.[41] (As early as 1875, the United States had prohibited the importation of women for purposes of prostitution.) It had been widely reported in popular magazines that a loose organization of Russian Jews was supplying prostitutes to Chicago's brothels. When a local prosecutor claimed to have found a note, thrown from a brothel, stating that one of the prostitutes was being held as a "white slave," sensational claims spread throughout the nation's press that American cities appeared to be replete with groups enslaving innocent young white women, often from small towns, who lived in big cities without the supervision of their parents. Even newspapers that generally took a measured tone, such as the *New York Times*, feared the menace of white slavery. Caught up in this hysteria, Congress responded quickly.

Enforcement of the 1910 Mann Act was placed in the hands of the Bureau of Investigation, now known as the FBI, with the establishment of a special

commissioner "for the suppression of the white slave traffic." Capitalizing on this moral panic, the Bureau of Investigation expanded its workforce and opened its first field offices. A 1950 history of the FBI described the Mann Act as the agency's first big assignment and concluded that "enforcement of the Mann Act began the transformation of the Justice Department's police bureau from a modest agency concerned with the odds and ends of Federal law enforcement to a nationally recognized institution, with agents in every State and every large city."[42] Before the passage of the Mann Act, the bureau had only twenty-three investigators. As David Langum notes, by 1912, white slave violations "overshadowed the entire balance of the Bureau's work."[43]

Passage of the Mann Act did not end the nation's fear of young girls being held in white slavery. In an address before the World Purity Conference in Louisville, Kentucky, in 1912, Stanley Finch, the first special commissioner for the white slave trade, warned that no young girl or woman was safe: "It is a fact that there are now scattered throughout practically every section of the United States a vast number of men and women whose sole occupation consists in enticing, tricking, or coercing young women and girls into immoral lives. . . . They seem to be able to ensnare almost any woman or girl . . . by deception, trickery, force [or] fraud." Finch stressed that these traffickers were quick to single out girls who, while "honorable and virtuous," were "careless" and without parental restraint.[44]

Despite these fears, there were doubts that the Mann Act was constitutional, since it appeared to trample on police powers reserved for the states and thus was an illegitimate extension of federal power. In 1913, the US Supreme Court swept aside such reservations, upholding the law in a case that involved crossing state lines for the purpose of prostitution. The court argued that America's dual form of government allowed both federal and state power to be exercised, "whether independently or concurrently, to promote the general welfare, material and moral." The power to regulate commerce, the court argued, extended to prostitution: "If the facility of interstate transportation can be taken away from the demoralization of lotteries, the debasement of obscene literature, the contagion of diseased cattle or persons, the impurity of food and drugs, the like facility can be taken away from the systematic enticement to and the enslavement in prostitution and debauchery of women, and, more insistently, of girls."[45]

Actual cases of "white slavery," where women were forcibly held as prostitutes, were rare. There were many sociological or economic reasons for prostitution, but "slavery" was not one of them. Within a few years, even the *New York Times* realized that panic had overridden good judgment. A 1916 *Times* editorial summed up what had gone wrong. The law, the paper's editors wrote, "owed its passage to a misapprehension or misrepresentation of its real lan-

guage and inevitable result, and to a sort of moral panic in Congress, the reflection of the spasms of amateur sociologists and mythmakers of the magazines."[46] Nevertheless, in the following year, the US Supreme Court upheld the law's reach to include noncommercial, consensual sex when it upheld the conviction of two men who took their girlfriends across state lines for "immoral purposes." The dissenters among the court's justices argued that Congress's intent was to target prostitution, not to establish a federal crime for "occasional immorality."[47] They buttressed their argument by citing the congressional report that accompanied the bill:

> This legislation is needed to put a stop to a villainous interstate and international traffic in women and girls. The legislation is not needed or intended as an aid to the States in the exercise of their police powers in the suppression or regulation of immorality in general. It does not attempt to regulate the practice of voluntary prostitution, but aims solely to prevent panderers and procurers from compelling thousands of women and girls against their will and desire to enter and continue in a life of prostitution.[48]

Nonetheless, with the blessing of the court's majority, enforcement of the law took off, with 50,500 allegations of "immoral purpose" taken up by the Bureau of Investigation.[49] Countless other cases never made it that far, but they were still a source for blackmail. It was easy to threaten men who transported women across state lines. Convictions ran into the hundreds each year, with prison sentences ranging from about one year to more than three years. Gangsters, radicals, and blacks usually received the harshest treatment. Among the accused in notable Mann Act cases were film star Charlie Chaplin (found not guilty, but he left the United States as a result) and rock and roll pioneer Chuck Berry, who was convicted in 1960 on an "immoral purpose" charge and served eighteen months in prison. Beginning in the 1940s, Mann Act cases had begun to wane. In 1962, the Department of Justice prohibited US attorneys, without its approval (which generally was not forthcoming), from prosecuting cases of noncommercial consensual sex. In 1986, more than fifty years after passage of the Mann Act, Congress amended the law, removing the phrase "debauchery and for any other immoral purpose," thus formally bringing to an end the ban on two consenting unmarried adults who, while traveling across state lines, might have sex.

DRUGS

While federal drug laws are often seen as synonymous with the war on drugs, which began in the 1970s, the first federal drug-possession laws were passed much sooner, in the early decades of the twentieth century. (This early history

is presented here, while the full-scale war on drugs is examined in chapter 6.) Criminalizing the nonmedical use of "drugs" stemmed from the same moral position as the push to ban alcohol consumption. The biggest difference between the two was that alcohol use was deeply rooted in practices and traditions in Western civilization and, for many, was simply an enjoyable part of everyday life. Narcotics such as opium, on the other hand, were easily stigmatized and criminalized. While states had their own drug laws, the national government's effort began in 1909 and has continued ever since. Between 1909 and 1970, there were sixty-four laws or congressional resolutions passed that were related to opium and narcotics. On average, there was more than one such action each year.[50]

Concern over opium use in the United States grew during the Spanish-American War, which resulted in the United States taking the Philippines from Spain. A 1906 US investigation into opium use in Asia described it as "one of the gravest, if not the gravest, moral problem of the Orient."[51] In 1909, Congress responded by banning the importation and use of opium for nonmedical purposes. To strengthen the national government's effort against such drugs, Congress passed the 1914 Harrison Narcotics Tax Act, which required all those who were involved in opium production and its trade to register and pay a tax. The act was intended to stop the use of narcotics, which was described in the Senate debate on the bill as leading to "moral and economic degradation."[52] Using the tax system in this way prevented any questions about national authority to enforce the act from reaching the US Supreme Court, since the federal government's power to tax was less controversial than extending its reach into traditional state authority. While there were other narcotics laws passed in the following decades, the most significant was the 1937 Marihuana [*sic*] Tax Act. Fueled in part by racial prejudice (up to the 1920s, the majority of marijuana users were Mexican immigrants), the law was similar to the Harrison Act. A system of registration and taxation was established to prevent its usage. During Senate hearings on the bill, wildly exaggerated claims were made that marijuana use caused violence and insanity. Harry Anslinger, who had previously served as assistant commissioner in the Bureau of Prohibition and became the first head of the Federal Bureau of Narcotics in 1930, maintained that a single marijuana cigarette was sufficient to develop a homicidal mania.[53] Such claims, repeated in magazines, became the basis for what is now a classic cult movie, *Reefer Madness*.

PROHIBITION

This early battle over drug use was dwarfed by the effort to ban the production, sale, and transportation of alcohol. National Prohibition was short-lived,

with the Eighteenth Amendment (1920) repealed by the Nineteenth Amendment in 1933. Nonetheless, James Morone describes the movement for Prohibition as being rivaled only by abolition for its impact on America: "No other social movement lasted as long, promised so much, or stirred up more trouble."[54] Prohibition compelled the government to outlaw an entire industry and a common practice going back thousands of years. The United States was the only country in the Western world to attempt a total nationwide ban on alcohol. Even though, by 1920, 75 percent of Americans lived in "dry" areas (places that already banned alcohol), the moral fervor that fueled Prohibition could not rest until all drinking was banned. Assertions citing federalism, limited government, and individual autonomy were weak rebuttals to the forces that demanded a dry America. In the end, "sobering up the moral laggards beat local autonomy."[55]

While Maine had a short-lived experience with banning the consumption of alcohol in the 1850s, it was not until after the Civil War that the push for Prohibition became a nationwide crusade. Numerous organizations arose that were dedicated to the cause: the Prohibition Party (1869), the Woman's Christian Temperance Union (1873), and the Anti-Saloon League (1893), to name but a few. For many, immigrants and their drinking habits were destroying the social fabric of the nation. Alcohol was blamed for countless social ills: poverty, prostitution, family breakups, wife abuse, sloth, and laziness. Prohibition seemed to offer a solution to the chaos of the social dislocations of urbanization, with all its attendant ills. Yet it was World War I that may have provided the *drys*, as the Prohibition forces were known, with the final impetus needed to succeed. Foodstuffs used to produce alcohol were necessary for the war effort, and soldiers needed to be kept away from drinking. At the same time, anti-immigrant sentiment was on the rise, with the beer industry being dominated by Germans, and the spirits industry having a number of prominent Jewish-owned businesses. Racism added more fuel to the Prohibition cause. African-Americans were often depicted as getting drunk and raping white women. And if this was not enough, many in the women's suffrage movement argued that since drinking was destroying the home and the family, women could be counted on, if given the right to vote, to support Prohibition.[56]

Leading businessmen saw drinking as hurting the efficiency of the workforce, while "good government" reformers saw the saloon as the site of urban political corruption. Although Prohibition did have broad support, majorities were not necessarily required to push through legislative or even constitutional restrictions. Rural districts, geographically large but less populated than urban areas, dominated state legislatures and Congress in the era before the US Supreme Court required legislative districts to contain equal numbers of people.

In many states, "dry" referendums failed to win popular approval, only to be passed by the state legislature.

One of the great ironies of Prohibition was that in America, drinking was a common practice—and a longstanding one. The ship that brought the Puritans to the Massachusetts Bay Colony in 1630 contained 10,000 gallons of wine and three times as much beer as water.[57] US government figures show that in the 1790s, the annual per capita consumption of alcohol for those fifteen years of age and older amounted to thirty-four gallons of beer and cider, five gallons of spirits, and one gallon of wine.[58] By 1825, the annual per capita alcohol consumption of 90 proof whiskey peaked at 9.5 gallons for those who were fifteen and older.[59] Drinking was not just a private affair, it was public policy. Soldiers and sailors were given daily rations of spirituous beverages. In 1792, Congress set a daily alcohol ration for the army, and this directive lasted until the 1830s. Each man was issued 13.6 gallons per year, the equivalent of about one quart per week.[60] For the navy, the ration was a half pint of spirits or one quart of beer per day. The navy's daily ration was not discontinued until the Civil War.

Prohibition did not—by a long shot—end drinking in America. There were all sorts of exceptions built into the National Prohibition Act (commonly known as the Volstead Act) that implemented the Eighteenth Amendment. Religious groups received a "sacramental" exemption, which was creatively and widely abused. There were medical exemptions, and one could produce alcohol for one's own use. The *consumption* of alcohol was never made illegal, just its manufacture, sale, and transport. Bootlegging was rampant, smuggling was widespread, and illegal drinking establishments proliferated. Enforcement was weak, particularly in "wet" urban areas. The law still ensnared thousands, however. For example, in New York City 11,000 arrests were made in 1922. Overall, the federal courts were inundated. In 1920, the first year of Prohibition, there were 5,095 cases concerning Volstead violations out of a total federal caseload of 34,230; by 1929, there were 75,298 violations. The federal prison population also rose, from a little over 5,000 in 1920 to 12,000 ten years later.[61] The murder rate increased, and gangsters loomed ever larger in the public mind.

As soon as Prohibition was in place, a movement for its repeal began. Widespread disobedience, diminishing concerns over the morality of drinking, and support by elites for repeal each contributed to the end of Prohibition. Some leading businessmen thought that repeal would boost federal tax revenue, due to the excise tax on alcohol. This, in turn, would help efforts to reduce income taxes on the wealthy. The "noble experiment," as Prohibition was called, was over in just thirteen years. Even though some states remained dry, federal alco-

hol tax revenue in the first year after Prohibition was considerable, reaching approximately $260 million.[62]

Prohibition changed criminal law forever. To enforce the law, federal plea bargaining expanded dramatically. The US Supreme Court made fundamental changes to constitutional interpretations of search-and-seizure law, permitting the police to use wiretapping without a warrant (a practice that stood until 1967), and allowing dual prosecutions (federal and state) for the same act.[63] Legal scholar Robert Post, among others, credits Prohibition with providing the foundation for the New Deal expansion of the administrative state and the notion of national citizenship. For Post, Prohibition stimulated the "belief that the nation, as distinct from the individual states, was a natural unit of democratic self-determination."[64]

Later Sex Censorship

PRINT MEDIA

It was not until the 1930s that the standards governing the definition of obscenity used to implement the Comstock Act began to be chipped away. For over 100 years, American courts had largely relied on the 1857 British *Queen v. Hicklin* case for an operational approach to defining obscenity. If any passage of a literary work "would corrupt those whose minds are open to immoral influences," it was considered to be obscene.[65] The first US battle to overturn this standard occurred in 1929, when Senator Bronson Cutting (R-NM), a Harvard-educated and well-read lover of literature, fought to open up Customs Bureau censorship when one of his constituents encountered problems bringing in D. H. Lawrence's *Lady Chatterley's Lover*. Cutting tried to have all censorship provisions concerning imported works deleted, but he was only able to have an exemption for classics, at the discretion of the secretary of the treasury, if the books were imported for noncommercial purposes. He was also able to establish the right to a jury trial for those who ran afoul of the law. A second step away from the *Hicklin* standards occurred in a 1930 US Court of Appeals ruling that selling a pamphlet on sex education would be allowed, since the book was "sincere," "truthful," and "scientific." It would be intolerable, the judge ruled, to blanket all sex education as "obscene."[66] In 1933, another US Court of Appeals decision further loosened the operational approach to obscenity after New York City customs officers seized copies of James Joyce's *Ulysses* for "the dirtiest language imaginable." The publisher argued that the work should be evaluated as a whole, in order to show that the work was not obscene. The appeals court agreed. Due to the prominence of the case, it was hailed as a new standard that was used by most lower courts. As a result, federal obscenity

prosecutions declined, and between 1946 and 1956, there were no prosecutions for importing obscene materials.

The final blow to the *Hicklin* test came in the US Supreme Court's 1957 landmark decision, *Roth v. United States*, which established a new standard for determining what was obscene: "Whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interests."[67] Despite this broader interpretation, the court still maintained that obscenity itself was not something that deserved First Amendment protection. Ideas with "even the slightest redeeming social importance" should be protected, the court ruled, but obscenity was "utterly without redeeming social importance."[68] Citing twenty federal statutes concerning obscenity, passed between 1842 and 1956, the obscenity laws of each state, and international agreements with more than fifty nations, the court claimed that obscenity had never been deemed to be a protected form of speech. Obscenity was simply material that appealed to a "prurient interest." For the court, the classes of speech that could be punished without raising constitutional problems "*include the lewd and obscene. . . . It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step toward truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality*" (emphasis in original).[69]

The US Supreme Court continued to wrestle with its understanding of what constituted obscenity throughout the 1960s. Only in 1973, in *Miller v. California*, were a majority of the justices able to agree on an operational standard that has since remained in place. A three-part test was set forth: "(a) whether the 'average person, applying contemporary community standards' would find that the work, taken as a whole, appeals to the prurient interest . . . ; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value."[70] Notwithstanding this even broader standard, the court has allowed a number of sexually related materials or activities to be prohibited or banned, such as child pornography, the location of adult theaters, and nude dancing.

MOVIES

Most of the censorship of movies occurred at the state and local levels, with the first such effort taking place in Chicago in 1906, followed by the first statewide effort in Pennsylvania in 1911. In 1912, Congress banned boxing films from interstate commerce, and in 1913 it authorized the banning of obscene imported films. The US Supreme Court soon weighed in on the status of this new

technology when, in 1915, it ruled that "moving pictures" were "business," not part of the press, and thus were not entitled to protection from censorship. The case had challenged Ohio's statute that "only such films as are, in the judgement and discretion of the board of censors, of a moral, educational, or amusing and harmless character" could be shown in theaters. Censorship was not only allowable, but desirable. Films, the court ruled, "may be used for evil," and a "prurient interest may be excited and appealed to. Besides, there are some things which should not have pictorial representation in public places and to all audiences."[71]

Censorship of films was common, and by one account, about 80 percent of major studio pictures were censored in 1927.[72] (To stave off further federal censorship, the industry established its own morals code, which stood until the 1960s, when the current system of voluntary movie ratings [G, PG, PG-13, R, NR] was developed). It was not until 1952 that the US Supreme Court ruled that films were protected by the First Amendment.[73] Nonetheless, since obscenity was not protected speech, movies could still be censored if they were deemed to be obscene. Even in the mid-1960s, the majority of major films that were made were being censored by local film boards.

RADIO AND TELEVISION

Federal regulation of radio presented a different challenge. Radio, unlike movies, was broadcast into homes and could be heard by anyone near a receiver. The 1927 Radio Act, which established the system of broadcast licensing that is largely still in place, prohibited censorship, but it also stated that "no person within the jurisdiction of the United States shall utter any obscene, indecent, or profane language by means of radio communication." In 1931, the first person punished for broadcast indecency was sentenced to a six-month jail term for referring to an individual as "damned" and using the expression "By God."[74] For station owners, a bigger fear than jail was the provision that a station could lose its broadcast license for violating the law. The same language prohibiting indecency, obscenity, or profanity was incorporated into the 1934 Communications Act, which established the Federal Communications Commission. This act was subsequently applied to television. From 1934 until 1994, there was a maximum fine of $10,000 per violation, which has been raised several times since then.

Broadcasters were so careful not to violate the FCC's standards that there were no fines levied against broadcasters until 1970, and the early fines were minor. The boundaries of the FCC's authority over broadcast indecency remained unclear until 1978, when the US Supreme Court upheld an FCC ruling against radio station WBAI-FM in New York, a listener-sponsored community

station. The FCC had put a complaint in the station's license renewal file after it broadcast comedian George Carlin's now-famous "Filthy Words" monologue. Carlin had pointed out that there were seven words that could not be said on the radio or television, and he then proceeded to analyze each one: *shit*, *piss*, *fuck*, *cunt*, *cocksucker*, *motherfucker*, and *tits*. The court ruled that these words were indecent, and, since broadcasting was easily accessible to children, broadcast speech could be treated more strictly than words in print.[75]

In 1996, Congress, upset with the immorality of much that was available on television, asked the television industry to establish a voluntary rating system for its programs that would appear on the screen, both at the beginning of programs and after commercial breaks. This system would empower parents to control what their children watched. After 2000, the FCC required that all new television sets sold in the United States contain a V-chip that would allow sets to be programed to not receive programs with a particular rating.

A nationwide controversy over the FCC's power to fine broadcasters for obscenity erupted after the 2004 Super Bowl. Singer Janet Jackson, performing during the game's halftime show, had a "wardrobe malfunction," which allowed one of her nipples (although covered with a star-shaped shield) to be exposed for half a second. Although the FCC levied a fine of $550,000 on the national broadcaster (CBS), Congress, still unsatisfied, passed the 2005 Broadcast Decency Enforcement Act, which raised the maximum fine for each violation from $32,500 to $325,500, with an even larger maximum fine of $3 million for syndicated broadcasts aired over multiple stations. With the cost of obscenity rising, radio shock-jock Howard Stern left broadcast radio in 2004 for subscriber satellite radio, which was not regulated by the FCC. At the time, he was the most fined person in the history of broadcasting, having paid a total of $2.5 million for multiple offenses. The FCC has continued to wrestle with what is allowable and, in particular, has gone back and forth on the issue of fleeting expletives or excited utterances. In 2010, a US Court of Appeals struck down the FCC rule that even one utterance of an expletive was unlawful, because the standard was unconstitutionally vague.

THE INTERNET

The commercialization of the Internet in the early 1990s presented another forum for morals regulation. Congress passed three laws in the mid-1990s, each with a goal of regulating obscenity and indecency: the 1996 Communications Decency Act; the 1996 Child Pornography Prevention Act; and the 1998 Child Online Protection Act. Each was justified as protecting children from the corrupting effects of the Internet, and each was subsequently struck down by the courts for being overly broad in its reach.

Sexually Explicit Material on Military Bases

Congress also acted to suppress access to sexually explicit material within the armed forces. In 1996, it passed the Military Honor and Decency Act, which prohibited "the sale, or rental of sexually explicit material on military property."[76] Sexually explicit material was defined as "an audio recording, or a periodical with visual depictions, produced in any medium, the dominant theme of which depicts or describes nudity, including sexual or excretory activities or organs, in a lascivious way." Although challenged in court, the law was upheld by a US Court of Appeals, which ruled that it was a reasonable restriction, in light of the military's unique role in society.[77] The US Supreme Court refused to hear the case, allowing the lower court's ruling to stand.

Homosexuality

Despite the recent turnaround in the law toward homosexuality, for over 100 years federal policies punished gays and lesbians. Based on traditional notions of morality, homosexuality was labeled as a "crime against nature," and even as "unmentionable."

Laws against homosexuals covered a wide range of issues, including those on government employment practices, immigration policy, sodomy, military service, and gay marriage. Beginning in the late 1990s, however, there has been a constitutional revolution in the rights of gays and lesbians. The old order of traditional opprobrium was epitomized in *Bowers v. Hardwick* (1986), when the US Supreme Court upheld state sodomy statutes as legitimate exercises of moral disapproval. But within a few years, the court's thinking had changed, and it moved step-by-step to strike down antigay public policy. In *Romer v. Evans* (1998), the court struck down Colorado's constitutional amendment that prohibited any protection against discrimination on the basis of "homosexual, lesbian, or bisexual orientation, conduct, practices, or relationships." In *Lawrence v. Texas* (2003), it struck down statutes against sodomy, overturning the *Bowers* decision. In *United States v. Windsor* (2013), it struck down key aspects of the 1996 Defense of Marriage Act, which blocked recognition of same-sex marriages. In 2015, in *Obergefell v. Hodges*, one of the landmark civil liberties cases in American history, the court struck down all bans on same-sex marriage. Nevertheless, the history of government policy toward homosexuals has been one of explicit condemnation and discrimination, which was first expressed through immigration restrictions.

IMMIGRATION

Immigration restrictions, which excluded criminals, paupers, and those with physical and mental disabilities as "undesirables," had long been in place. Beginning in the late nineteenth century, others were barred from entry, including prostitutes, polygamists, anarchists, illiterates, and, in 1891, those who committed crimes of "moral turpitude." In 1917, "moral turpitude" became grounds for deportation. It was not until 1952, however, that immigration law targeted homosexuals. From 1952 to 1990, the United States was the only nation in the world that barred visitors and potential immigrants who were homosexuals.[78] The law did not explicitly exclude homosexuals, but it contained a phrase regarding those "afflicted with a psychopathic personality," which was defined in terms of homosexuality. The 1952 Immigration and Nationality Act, also known as the McCarran-Walter Act, required immigration officials to refer any potential immigrant who was suspected of being a homosexual to the US Public Health Service (PHS) for an official diagnosis. If diagnosed as a homosexual, he or she was barred from entry. By the 1960s, the understanding that the law had defined homosexuals as persons "afflicted with a psychopathic personality" reached the US Supreme Court. In upholding this interpretation, the court cited the US Senate report that accompanied the 1952 law: "The exclusion of aliens afflicted with psychopathic personality or a mental defect which appears in the . . . bill is sufficiently broad to provide for the exclusion of homosexuals and sex perverts. . . . [The use of this phrase] is not to be construed in any way as modifying the intent to exclude all aliens who are sexual deviates."[79]

The reliance on PHS psychiatrists to certify that an individual was gay put these doctors at odds with their professional peers in 1973, when the American Psychiatric Association decided that homosexuality was not a psychiatric disorder. In 1979, the PHS informed the Immigration and Naturalization Service (INS) that it would no longer certify that homosexuals were psychopathic personalities, making the law unenforceable. To get around this roadblock, in 1980 the Department of Justice announced that while it had "the legal obligation to exclude homosexuals from entering the United States," it would only do so upon the voluntary admission by an individual that he or she was a homosexual.[80] In 1990, Congress deleted sexual orientation as grounds for immigration exclusion. And in 1994, the Clinton administration's attorney general, Janet Reno, added persecution for being homosexual as a basis for granting asylum in the United States.

GOVERNMENT EMPLOYMENT

Antigay attitudes also fueled a ban on gays working for the government. In the 1940s, security requirements for government employment were put in place that, for the next twenty-five years, blocked gays and lesbians from government jobs. Parallel to the 1950s fear of communists, the "Lavender Scare" rooted out gays and lesbians from government employment. A far greater number of gays and lesbians were dismissed from government service than individuals who were fired for being communists or communist sympathizers.[81] At the beginning of the Cold War, fears of internal subversion due to loyalty or security pervaded the federal government. In 1947, for example, Congress gave the secretary of state the authority to dismiss any employee, at his discretion, who was seen as a threat to national security. The Senate Appropriations Committee warned the secretary of state that homosexuals were "known to be security risks."[82] Nor did Congress stop there. In 1948, Congress used its power over the District of Columbia to stiffen the penalties for sex crimes. Until that time, cases of molestation, solicitation, or homosexuality typically had resulted in a misdemeanor charge, with a small fine. The Miller Sexual Psychopath Law increased the penalties for sodomy, with fines raised to $1,000 and prison terms of up to twenty years. Repeat offenders would be examined by psychiatrists, to determine if they were psychopaths who should be committed to a hospital until they were no longer deemed to be a threat to the public.

But the real push against homosexuals came in 1950. After Senator Joseph McCarthy charged that there were card-carrying members of the Communist Party working for the Department of State, a department official testified that there were no such employees, but that ninety-one homosexuals had been forced out as security risks. (At the time, homosexuals were widely seen as security risks because they could be blackmailed to give up secret information in order to keep their sexual identity from being exposed.) Instead of demonstrating that its security program was working, this admission fueled further investigations, as well as a partisan political attack against the Truman administration. A few months later, the Senate authorized an investigation of "the employment by the Government of homosexuals and other sex perverts."[83]

The committee's final report made it official: "Homosexuals and other sex perverts are not proper persons to be employed in Government for two reasons; first they are generally unsuitable, and second, they constitute security risks."[84] Yet the committee provided no evidence of actual security risks or cases of blackmail in the United States. Instead, the report simply stated: "It is generally believed that those who engage in overt acts of perversion lack the emotional stability of normal persons. In addition, there is an abundance of

evidence to sustain the conclusion that indulgence in acts of sex perversion weakens the moral fiber of an individual to a degree that he is not suitable for a position of responsibility."[85] The report detailed the dismissal of 4,954 "homosexuals and other sex perverts" from the federal government between January 1947 and October 1950. These individuals came from fifty-four different civilian offices and each branch of the armed forces, with 4,380 cases originating in the armed forces, and 574 from civilians offices. Because the committee argued that homosexuals were "unsuitable" for federal employment, its recommendation was blunt: "Get sex perverts out of Government and keep them out."[86]

With sentiment against homosexuals growing, as soon as Dwight Eisenhower became president, he issued an executive order barring those who committed acts of "sexual perversion" from federal government employment. In his 1954 State of the Union address, Eisenhower announced that his new security program had already netted 2,200 offenders. Historian David Johnson, in summarizing Eisenhower's security program, concludes that "national security would require not only political loyalty but also proper morality."[87] By 1958, one study estimated that 20 percent of employed American adults were given some form of loyalty/security screening, including even those who participated in one-day government-sponsored conferences.[88] Monitoring the proper morality of federal employees extended beyond the issue of homosexuality, however. Even consensual heterosexual activity led to dismissals if it occurred outside of marriage, because such activities violated American moral standards.

A widely publicized case occurred in 1953, when a naturalized American citizen, Marcelle Henry, who was born in France, was fired from the radio network Voice of America because she had heterosexual relations outside of marriage. After being investigated for loyalty, and exonerated, she was investigated as a security risk. Officials in the Department of State grilled her about her sexual behavior. She was not accused of being a lesbian, but, as she put it, of "loving the other sex too much." She was asked: "Have you ever had sexual intercourse without being married? When did you last buy contraceptives? When did you last have sexual intercourse? With whom?" When she was fired, she was told that she had "manifested a disregard for the generally accepted standards of conventional behavior." The moral standards of the United States, she was told, were different from those in France.[89] This case was brought to public attention in June 1953, with a lengthy five-part series featured in the *New York Post*, one of New York City's major newspapers. One article reported that she had written to US Supreme Court Justice William O. Douglas, retelling her experience of repeatedly being insulted: "Mr. Justice, allow me to

say this: many of us who have been subjected to such tactics as have until now been connected with Gestapo methods or Soviet ways of torturing the minds of decent citizens are afraid to mention what they have been subjected to."[90] Meanwhile, journalists brought to light other cases that arose from the new security/loyalty program. Anthony Lewis, then a reporter for the *Washington Daily News* and later a reporter for the *New York Times* for a number of years, won the 1955 Pulitzer Prize for an even longer series of 1954 articles detailing the navy's dismissal of a longtime civilian employee as a security/loyalty risk, even though he was never presented with any evidence as to why he was dismissed. When pressed, the navy admitted it had no evidence. In this case, the maligned employee was cleared and rehired, and the navy apologized.

Most scholars of US public policy have long ignored such intrusive efforts by federal authorities to monitor and punish intimate behavior. In 1955, one year after Eisenhower's State of the Union address, Louis Hartz published his celebrated account of American political development, *The Liberal Tradition in America*, which contended that we were a nation of "atomized individuals." Hartz believed this was the "master assumption" that explained the limited nature of American government.[91] His book, cited thousands of times, quickly became the touchstone for scholars claiming the United States was an "exceptional" nation, dedicated to the principle of limited government and individual liberty.

It was not until 1975, twenty-five years after the first formal bars to homosexuals working for the federal government, and after years of agitation by gay rights groups, that the Civil Service Commission removed "immoral conduct" as grounds excluding someone from federal employment, insofar as it applied solely to gays. In its press release announcing this decision, the commission stated that it would now apply the "same standard in evaluating sexual conduct whether heterosexual or homosexual."[92]

MILITARY SERVICE

Although there had not been a longstanding ban on gays and lesbians serving in the military, sodomy was long grounds for dismissal. During World War II, the military began psychiatric screening for homosexuality, for the purpose of rejecting potential recruits. But as wartime demands for personnel increased, these restrictions were loosened. Nevertheless, once in the armed services, if individuals were discovered to be gays or lesbians, they were often discharged. Between 1941 and the late 1980s, almost 100,000 service members were discharged from the military for being homosexual.[93] By the early 1990s, gay rights advocates challenged these restrictions as nothing more than prejudice.

During the 1992 presidential campaign, Bill Clinton pledged to end the ban on gays in the military. As president, Clinton tried to fashion a compromise with those opposed to allowing gays and lesbians to serve, known as "Don't Ask, Don't Tell." Individuals were not to be asked directly about their sexual orientation, but if such information surfaced, that person could be discharged. Between 1993 and 2010, when Congress repealed "Don't Ask, Don't Tell" and allowed gays and lesbians to serve openly in the military, approximately 13,000 service members were discharged, due to their sexual orientation.

UPHOLDING SODOMY

In the 1980s, traditional ideas about acceptable sexual practices continued to structure how the US Supreme Court viewed laws prohibiting sodomy. In *Bowers v. Hardwick* (1986), the court upheld Georgia's sodomy laws, which banned genital or oral contact with the anus of another person, and oral contact with the genitals, whether that occurred with someone of the same sex or the opposite sex. Georgia's statute made all acts of sodomy illegal, even those committed by married couples, but the court case involved two men. The US Supreme Court framed the issue before them narrowly, asking whether "the Federal Constitution confers a fundamental right upon homosexuals to engage in sodomy and hence invalidates the laws of the many States that still make such conduct illegal and have done so for a very long time." The answer was a firm no:

> Proscriptions against that conduct have ancient roots. . . . Sodomy was a criminal offense at common law, and was forbidden by the laws of the original 13 States when they ratified the Bill of Rights. In 1868, when the Fourteenth Amendment was ratified, all but five of the 37 States in the Union had criminal sodomy laws. In fact, until 1961, all 50 States outlawed sodomy, and today, 24 States and the District of Columbia continue to provide criminal penalties for sodomy performed in private and between consenting adults.[94]

In a concurring opinion, the chief justice of the court pointed to precedents from both Roman law and sixteenth-century British common law, noting that Georgia's sodomy statute was passed in 1816: "To hold that the act of homosexual sodomy is somehow protected as a fundamental right would be to cast aside millennia of moral teaching."[95] Gay rights advocates, among others, criticized the decision as being out of touch with contemporary moral standards and common practices.

DISCRIMINATION

Within a few years, the US Supreme Court's attitude toward the rights of gays and lesbians began to change. In a first step toward sexual equality, the court struck down a Colorado constitutional amendment, passed by the state's voters in 1992, that prohibited protections against discrimination for a particular set of individuals: gays, lesbians, and bisexuals. In *Romer v. Evans*, the court ruled that Colorado's amendment appeared to be motivated by animus, withdrawing legal protections against discrimination from just one group: "A law declaring that in general it shall be more difficult for one group of citizens than for all others to seek aid from the government is itself a denial of equal protection of the laws in the most literal sense."[96] The case, according to legal scholar Noa Ben-Asher, represents a major transformation from *Bowers*: the "legal homosexual" (as defined in various statues), previously condemned as a sexual deviant, was transformed into a class of citizens that suffered from animus and discrimination.[97]

SODOMY RECONSIDERED

A giant step in the US Supreme Court's evolution on gay rights came in *Lawrence v. Texas* (2003), a case hailed by its supporters as one of the most significant civil liberties cases in decades. The court overturned the *Bowers* decision and struck down all prohibitions against sodomy. In so doing, it rejected the *Bowers* court's reading of history and its understanding of liberty. In this landmark decision, the court argued that historical evidence indicated that private, consensual, same-sex behavior had not been punished, and nineteenth-century sodomy laws were only applied to nonconsensual acts. Fellatio was not included in state sodomy laws until the late nineteenth century, and it was not a crime in all states until 1921. Cunnilingus only was outlawed in the twentieth century.[98] Moreover, it was not until the 1970s that any state singled out same-sex activity for criminal prosecution. It was clear, the Court noted, that contemporary (i.e., at the time the case was being argued) moral standards were changing. At that point, only fourteen states still prohibited sodomy, down from twenty-four in 1986.

In overturning the *Bowers* decision, the court rejected the historical basis of the decision and its understanding of liberty: "We now conclude, [that the *Bowers* court's ruling] discloses the Court's own failure to appreciate the extent of the liberty at stake. To say that the issue in *Bowers* was simply the right to engage in certain sexual conduct demeans the claim the individual put forward, just as it would demean a married couple were it to be said marriage is simply about the right to have sexual intercourse. . . . *Bowers* was not correct

when it was decided, and it is not correct today."[99] Based on the principle of individual liberty, the court's majority argued that "liberty presumes an autonomy of self that includes freedom of thought, belief, expression, and certain intimate conduct." This interpretation meant that the Constitution would now protect "adult persons in deciding how to conduct their private lives in matters pertaining to sex."

In a scathing dissent, Justice Antonin Scalia worried that the decision threw into doubt the "laws against fornication, bigamy, adultery, adult incest, bestiality, and obscenity," each of which he thought was well founded. Although the court avoided the question of same-sex marriage, Scalia worried that the decision put the court on this inevitable path of establishing it as a constitutional right:

> Today's opinion dismantles the structure of constitutional law that has permitted a distinction to be made between heterosexual and homosexual unions, insofar as formal recognition in marriage is concerned. If moral disapprobation of homosexual conduct is "no legitimate state interest" for purposes of proscribing that conduct, and if, as the Court coos (casting aside all pretense of neutrality), "[w]hen sexuality finds overt expression in intimate conduct with another person, the conduct can be but one element in a personal bond that is more enduring," what justification could there possibly be for denying the benefits of marriage to homosexual couples exercising "[t]he liberty protected by the Constitution"?[100]

Laurence Tribe, a legal scholar and the losing lawyer in *Bowers v. Hardwick*, described the *Lawrence* decision as one of the three most culturally significant US Supreme Court cases since 1937, with the others being the landmark decisions of *Brown v. Board of Education* (1954) and *Roe v. Wade* (1973).[101] *Lawrence* brought to an end centuries of legal condemnation for same-sex sexual activity and declared that moral condemnation could no longer be the basis upon which legislation could rest.[102] When the court struck down Texas's sodomy statute as an infringement on liberty, the United States joined all of the nations of Europe, as well as Canada, Japan, Australia, and New Zealand, among others, in legalizing same-sex sexual activity. In a number of nations in Western Europe (e.g., Belgium, France, Luxembourg) same-sex sexual relations have been legal since the end of the eighteenth century.

SAME-SEX MARRIAGE

After the 1994 elections, when Republicans took control of Congress for the first time in forty years, the new majority reached out to "values voters." One aspect of this effort was the 1996 Defense of Marriage Act (DOMA), whose

stated purpose was to protect heterosexual marriage from an "orchestrated legal assault."[103] The US House of Representatives' Judiciary Committee's report supporting DOMA highlighted two specific goals: protecting *heterosexual* marriage, and protecting the right of individual states to formulate their own marriage laws.

The provision that no state would be required to recognize same-sex marriages performed in another state was included in anticipation that Hawaii might become the first state to recognize same-sex marriage, in light of what was then a recent ruling of a lower state court. Those opposed to same-sex marriage feared that other states would be forced to recognize such marriages performed in Hawaii, under the US Constitution's provision known as "full faith and credit." This provision has been interpreted as requiring state actions, such as a marriage performed in one state, to be accepted by other states. (Some legal scholars rejected this view.) DOMA's other provision defined marriage, when applied to federal law and administrative rulings, as being between two members of the opposite sex. Thus it potentially affected veterans benefits, family medical leave, immigration, and a wide range of other laws. The report noted that there were 800 sections of federal statutes and regulations in which the word *marriage* appeared, with the word *spouse* appearing 3,100 times. The House Judiciary Committee's report justified DOMA as attempting to "defend and nurture" heterosexual marriage, protect state sovereignty, and save "scarce governmental resources."[104] "Civil laws that permit only heterosexual marriage," the committee's Republican majority wrote, "reflect and honor a collective moral judgement about human sexuality. This judgement entails both moral disapproval of homosexuality and a moral conviction that heterosexuality better comports with traditional (especially Judeo-Christian) morality."[105] Although President Bill Clinton signed the bill into law, he later came to regret his decision.

In 2010, the Obama administration announced that it would no longer defend the law's constitutionality, even though it would continue to enforce it. With a patchwork of state laws on same-sex marriage—some banned it through statute and others through a state constitutional amendment, while still others had legalized it—in *United States v. Windsor* (2013), the US Supreme Court struck down the DOMA provision that mandated federal recognition of marriage should only cover heterosexual couples. The court ruled that same-sex married couples were entitled to the "equal dignity of marriage." Thus the federal government had to treat same-sex marriages as equal to heterosexual marriages. Same-sex couples were therefore entitled to all federal benefits that accrue to heterosexual married couples.[106] Left undecided for the moment was whether same-sex couples had a constitutional right to marry, or whether states could refuse to recognize same-sex marriages performed in another state.

While the court explicitly avoided the former issue, several lower courts relied on the logic of the *Windsor* decision to strike down state bans on same-sex marriage. With different rulings by different lower courts, the US Supreme Court took on the issue directly in 2015. (By this time, more than 70 percent of the US population lived in states where same-sex marriage was legal.) In *Obergefell v. Hodges*, another of the landmark civil liberties cases in American history, the court ruled that same-sex couples had the same rights to marry as heterosexual couples: "Same-sex couples seek in marriage the same legal treatment as opposite sex couples, and it would disparage their choices and diminish their personhood to deny them this right."[107] Same-sex marriage was now the law of the land throughout the entire nation. The decision marked the end of legal discrimination against gays and lesbians.

Conclusion

Far from the picture of a weak, limited state described in the literature on American exceptionalism, the history of moral regulation is one of an active, strong state. It is the one area of state power that has diminished in recent years and continues to be in retreat. The dramatic transformation of public opinion toward sexual behavior and the rights of sexual minorities, as well as the legalization of marijuana in several states, suggests that in the future fewer and fewer restrictions based solely on moral disapproval will shape public policy.

Notes

1. For a similar argument, see James Morone, *Hellfire Nation* (New Haven, CT: Yale University Press, 2003); William Novak, *People's Welfare* (Chapel Hill: University of North Carolina Press, 1996). Morone's work is the single best book on the politics of "moral" regulation, and much of what follows in this chapter is indebted to his work.

2. See, for example, Lawrence Jacobs and Desmond King (eds.), *The Unsustainable American State* (New York: Oxford University Press, 2009).

3. Gaines Foster, *Moral Reconstruction* (Chapel Hill: University of North Carolina Press, 2002), 237–38.

4. Morone, *Hellfire Nation*, 24.

5. Ibid., 219.

6. See William Eskridge Jr., *Dishonorable Passions* (New York: Viking Press, 2008), 50–57.

7. Novak, *People's Welfare*, 149.

8. Louis Hockheimer, "Police Power," *Central Law Journal* 44 (1897): 158, cited in Novak, *People's Welfare*, 13.

9. David Flaherty, "Law and the Enforcement of Morals in Early America," in Donald Fleming and Bernard Bailyn (eds.), *Perspectives in American History* (Cambridge, MA: Charles Warren Center for Studies in American History, Harvard University, 1971), 217.

10. Joel Prentiss Bishop, *Commentaries on the Criminal Law*, 4th ed., 2 vols. (Boston: Little, Brown, 1868; originally published 1856), 1:545, cited in Novak, *People's Welfare*, 155.

11. Wayne Fuller, *Morality and the Mail in Nineteenth Century America* (Urbana: University of Illinois Press, 2003), 8.

12. For these and other quotes from the congressional debates over Mormon polygamy, see Stephen Eliot Smith, "Barbarians within the Gates: Congressional Debates on Mormon Polygamy, 1850–1879," *Journal of Church and State* 51, no. 4 (2009): 587–616.

13. *Congressional Globe*, 36th Cong., 1st Sess. (1860), 1410.

14. Poland Act of 1874, 18 Stat. 253 (1874).

15. Reynolds v. United States, 98 U.S. 145 (1878), at 165–66.

16. Murphy v. Ramsey, 114 U.S. 15 (1885), at 45.

17. Edmunds-Tucker Act of 1887, 24 Stat. 635 (1887); Stephanie Forbes, "Comment: Why Just Have One?: An Evaluation of the Anti-Polygamy Laws under the Establishment Clause," *Houston Law Review* 39 (2003): 1524.

18. Mormon Church v. U.S., 136 U.S. 1 (1890), at 19.

19. House Misc. Doc. No. 16, 37th Cong., 3rd Sess. (1863), 8–9, cited in Dorothy Ganfield Fowler, *Unmailable: Congress and the Post Office* (Athens: University of Georgia Press, 1977), 55.

20. Postal Act, 13 Stat. 504 (1865). For a brief legislative history, see James Paul and Murray Schwartz, *Federal Censorship: Obscenity in the Mail* (New York: Free Press of Glencoe, 1961), 254–55.

21. Fowler, *Unmailable*, 58.

22. See, for example, Paul Boyer, *Purity in Print*, 2nd ed. (Madison: University of Wisconsin Press, 2002); David Pivar, *Purity and Hygiene* (Westport, CT: Greenwood Press, 2002); David Pivar, *Purity Crusade* (Westport, CT: Greenwood Press, 1973); Alison Parker, *Purifying America* (Urbana: University of Illinois Press, 1997).

23. See Paul Boyer, *Urban Masses and Moral Order in America, 1820–1920* (Cambridge, MA: Harvard University Press, 1978).

24. David Langum, *Crossing the Line: Legislating Morality and the Mann Act* (Chicago: University of Chicago Press, 1994), 7.

25. Morone, *Hellfire Nation*, 278.

26. Paul Murphy, "Societal Morality and Individual Freedom," in David Kyvig (ed.), *Law, Alcohol, and Order* (Westport, CT: Greenwood Press, 1985), 70.

27. Felice Flanery Lewis, *Literature, Obscenity, and the Law* (Carbondale: Southern Illinois University Press, 1976), 2.

28. *Congressional Globe*, 42nd Cong., 3rd Sess. (March 1, 1873), 2005, cited in Morone, *Hellfire Nation*, 229.

29. Heywood Broun and Margaret Leech, *Anthony Comstock: Roundsman of the Lord* (New York: Literary Guild of America, 1927), 82–85, 151, cited in David Rabban, *Free Speech in the Forgotten Years* (New York: Cambridge University Press, 1997), 28.

30. Ibid., 30.

31. See Morone, *Hellfire Nation*, 230.

32. Anthony Comstock, quoted in Nicola Beisel, *Imperiled Innocents* (Princeton, NJ: Princeton University Press, 1997), 3.

33. New York Society for the Suppression of Vice, *Second Annual Report* (1876), 5–6, cited in Craig LaMay, "America's Censor: Anthony Comstock and Free Speech," *Communications and the Law* 19, no. 3 (September 1997): 20.

34. Ibid., 8.

35. Morone, *Hellfire Nation*, 249.

36. Ibid., 239.

37. Rabban, *Free Speech*, 28.

38. George Bernard Shaw, quoted in "Bernard Shaw Resents Action of Librarian," *New York Times*, September 26, 1905.

39. Morone, *Hellfire Nation*, 247. See also Carolyn Cocca, *Jailbait: The Politics of Statutory Rape Laws in the United States* (Albany: State University of New York Press, 2004).

40. Mann Act, 36 Stat. 825 (1910). David Langum's book *Crossing the Line* is the best book on the Mann Act, and most of what follows is based on his work. See also Frederick Gritter, *White Slavery* (New York: Garland, 1990).

41. Mara Keire, "The Vice Trust: A Reinterpretation of the White Slavery Scare in the United States, 1907–1917," *Journal of Social History* 35, no. 1 (2001): 3.

42. Max Lowenthal, *The Federal Bureau of Investigation* (New York: Harcourt Brace Jovanovich, 1950), 14, cited in Langum, *Crossing the Line*, 49.

43. Langum, *Crossing the Line*, 49.

44. Stanley Finch, *The White Slave Traffic: Address Before the World Purity Conference* (Washington: US Government Printing Office, 1912), 1, www.childtrafficking.com/Docs/finch_1912__white_slave_tra.htm.

45. Hoke v. United States, 227 U.S. 308 (1913), at 322.

46. Editorial, "The Blackmail Act," *New York Times*, September 20, 1916.

47. Caminetti v. United States, 242 U.S. 470 (1917).

48. US House of Representatives, *White Slave Traffic*, H.R. Rep. No. 47, 61st Cong., 2nd Sess. (1909), 9–10, cited in Langum, *Crossing the Line*, 42.

49. Morone, *Hellfire Nation*, 267.

50. Gerald Walsh Jr., *Opium and Narcotic Laws* (Washington, DC: US Government Printing Office, 1981).

51. Cited in Thomas Rowe, *Federal Narcotics Laws and the War on Drugs* (Binghamton, NY: Haworth Press, 2006), 13.

52. Cited in ibid., 15.

53. Cited in ibid., 29.

54. Morone, *Hellfire Nation*, 281.

55. Ibid., 283.

56. Daniel Okrent, *Last Call* (New York: Scribner, 2010), 15.

57. Ibid., 7.

58. Ed Crews, "Drinking in Colonial America: Rattle-Skull, Stonewall, Bogus, Blackstrap, Bombo, Mimbo, Whistle Belly, Syllabub, Sling, Toddy, and Flip," *Colonial Williamsburg Journal* (Holiday 2007), www.history.org/foundation/journal/holiday07/drink.cfm.

59. Mark Vargas, "The Progressive Agent of Mischief: The Whiskey Ration and Temperance in the United States Army," *Historian* 67, no. 2 (Summer 2005): 200.

60. Ibid., 204.

61. Richard Hamm, *Shaping the Eighteenth Amendment* (Chapel Hill: University of North Carolina Press, 1995), 267.

62. Okrent, *Last Call*, 361.

63. See, for example, Robert Post, "Federalism, Positive Law, and the Emergence of the Administrative State: Prohibition in the Taft Court Era," *William and Mary Law Review* 48 (October 2006): 1–182.

64. Ibid., 67–68.

65. Queen v. Hicklin, L.R. 3 Q.B. 360 (1868), cited in Paul and Schwartz, *Federal Censorship*, 16.

66. Paul and Schwartz, *Federal Censorship*, 55–63.

67. Roth v. United States, 354 US 476 (1957), at 489.

68. Ibid., 484.

69. Ibid., 485.

70. Miller v. California, 413 U.S. 15 (1973).

71. Mutual Film Corporation v. Industrial Commission of Ohio, 236 U.S. 230 (1915).

72. Joel Semonche, *Censoring Sex* (Lanham, MD: Rowman & Littlefield, 2007), 105.

73. Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495 (1952).

74. Lilli Levi, *The FCC's Regulation of Indecency*, First Reports 7, no. 1 (Nashville: First Amendment Center, April 2008), 2.

75. FCC v. Pacifica Foundation, 438 U.S. 726 (1978).

76. Military Honor and Decency Act, 10 U.S.C. § 2489a (1996).

77. General Media Communications, Inc. v. Cohen, 131 F. 3d 273 (1997).

78. Shannon Minter, "Sodomy and Public Morality Offenses under U.S. Immigration Law: Penalizing Lesbian and Gay Identity," *Cornell International Law Journal* 26 (1993): 771.

79. Boutlier v. INS [Immigration and Naturalization Service], 387 U.S. 118 (1967), at 120, citing S. Rep. No. 1137, 82nd Cong., 2nd Sess. (1952), 9.

80. Minter, "Sodomy," 779.

81. David Johnson, *The Lavender Scare* (Chicago: University of Chicago Press, 2004).

82. Ibid., 21.

83. S. Res. 280, 81st Cong., 2nd Sess. (June 1, 1950).

84. US Senate, Committee on Expenditures in the Executive Departments by its Subcommittee on Investigations, *Employment of Homosexuals and Other Sex Perverts in Government*, S. Doc. 241, 81st Cong., 2nd Sess. (1950), 3.

85. Ibid., 4.

86. Ibid., 20.

87. Johnson, *Lavender Scare*, 123.

88. Ibid., 137.

89. Ibid., 136, for examples of these types of cases.

90. Cited in Fern Marja, "Peephole Probe: Part 2," *New York Post*, June 9, 1953, 36. The other articles in the series appeared in *New York Post*, June 8, 5; *New York Post*, June 10, 3; *New York Post*, June 11, 5; *New York Post*, June 12, 2.

91. Louis Hartz, *The Liberal Tradition in America* (New York: Harcourt, Brace, Jovanovich, 1955).

92. Cited in Johnson, *Lavender Scare*, 210.

93. Allan Bérubé, *Coming Out Under Fire* (New York: Free Press, 1990), 276.

94. Bowers v. Hardwick, 478 U.S.186 (1986), at 192–94, citations and footnotes omitted.

95. Ibid., 197.

96. Romer v. Evans, 517 U.S. 620 (1996), at 633.

97. Noa Ben-Asher, "Conferring Dignity: The Metamorphosis of the Legal Homosexual," *Harvard Journal of Law & Gender* 37, no. 2 (Summer 2014): 252

98. William Eskridge Jr., *Dishonorable Passions* (New York: Viking Press, 2008), 3.

99. Lawrence v. Texas, 539 U.S. 558 (2003), at 567, 568, 562.

100. Ibid., 599, 604–5.

101. Laurence Tribe, "*Lawrence v. Texas*: The 'Fundamental Right' that Dare Not Speak Its Name," *Harvard Law Review* 117, no. 6 (April 2004): 1895.

102. Ben-Asher, "Conferring Dignity," 247.

103. US House of Representatives, Committee on the Judiciary, *Report on the Defense of Marriage Act*, H.R. Rep. No. 104-664, 104th Cong., 2nd Sess. (July 9, 1996), 2.

104. Ibid., 12.

105. Ibid., 15–16.

106. United States v. Windsor, 133 S. Ct. 2675 (2013).

107. Obergefell v. Hodges, 135 S. Ct. 2584 (2015), at 2602.

The Bailout State

The massive power and responsibility of the national government to steer and stabilize the economy was never more apparent than in response to the 2007–2009 financial crisis, the worst economic collapse since the Great Depression. *Trillions* of dollars were committed by the federal government to prevent a complete financial meltdown.

These efforts were dramatic proof that markets are not self-regulating. Contrary to the market fundamentalist position—market societies ideally function with limited or no government regulation—this episode confirms, once again, that such views are historically and practically utopian. The Wall Street bailout was not an exception to the rule of self-governing markets. Instead, it was another example of the role government plays in ensuring the viability of a market economy. It also showed the disasters that can result when government regulation is captured by the industries that are regulated to protect the public interest. While the recent bailout was unprecedented in scale, federal credit programs go back at least 100 years, and government bailouts are almost as old.

Never before confronted with a crisis of such massive scale and complexity, government officials took unprecedented steps in response. They forged a dizzying array of initiatives, injecting previously unimaginable sums into troubled or failing financial institutions. Paul Krugman describes the bailout as one of "frantic institutional creativity."[1] In July 2009, the Office of the Special Inspector General for the Troubled Asset Relief Program estimated the total amount of bailout came to $23.7 trillion, while a 2012 analysis of just the Federal Reserve's commitment was $29.785 trillion.[2] To put this in perspective, the size of the US economy in 2008, as measured by gross domestic product, or GDP, was just under $15 trillion, while the federal budget was $2.9 trillion. So how was this huge bailout possible? Multiple agencies across the federal government invested, insured, and loaned money to banks, Wall Street investment firms, insurers, and auto companies among others. Altogether, almost 1,000 firms received bailout money from the federal government. The United States acted as the world's central bank, loaning trillions of dollars to foreign central banks and large financial institutions headquartered in other

countries. And Congress addressed the broader economic collapse that resulted from the Wall Street crisis with the 2009 American Recovery and Reinvestment Act, a $787 billion stimulus bill.[3]

Most of the money committed to the bailout was in the form of loans that have been paid back, or, in the case of loan or investment guarantees, never needed to be paid out. Yet these guarantees were essential in showing that the federal government was ready to prevent a catastrophic financial failure. Despite the controversy sparked by bailing out financial elites who were responsible for causing the crisis in the first place, the initial outlays have been reimbursed. At the end of 2014, the Obama administration declared an end to bailouts for banks and automakers, with an overall net return of $15.4 billion.[4]

This does not answer the question, however, of whether the returns should have been greater, given the unprecedented risks. Determining if a loan has "made money" depends on the risk-adjusted rate of return. Given the potential for cataclysmic losses, due to the unknown risks involved, the bailout's return was meager. One estimate suggests that the rate of return on the Troubled Asset Relief Program (TARP) was 3.6 percent. In contrast, Warren Buffet made a 60 percent return on his 2008 investment in Goldman Sachs.[5]

But much more was at stake than the issue of an adequate return on investment. Many objected to the bailout of Wall Street because it violated their belief in market freedom and limited government. Others criticized the bailout for failing to help those among the nation's homeowners who were facing foreclosure. Still others were unhappy with the failure to prosecute the Wall Street officials who were responsible for rampant fraudulent activities. In the end, the bailout was directed as aid for the nation's largest financial institutions, not distressed homeowners, and no top executives were prosecuted. Even well after Wall Street rebounded with record profits, the average American still suffered the consequences of the collapse: stagnating wages and high levels of long-term unemployment, not to mention the millions who lost their homes due to foreclosure. A 2013 estimate by the Federal Reserve Bank of Dallas, examining the costs of the financial crisis in terms of lost GDP, suggested that the range was between $6 and $14 trillion, assuming that America's economic output eventually returns to pre-crisis levels. If not, the overall impact could double.[6] According to another estimate, the bailout prevented additional losses of $9.1 trillion (in 2014 dollars).[7]

Directing aid to the nation's leading financial institutions, as opposed to homeowners, was not surprising, since the Wall Street bailout was narrowly framed and implemented. Timothy Geithner, secretary of the treasury during the first Obama administration, saw his role almost exclusively as stemming financial panic, in order to prevent a second Great Depression. Geithner, who

had served as president of the New York Federal Reserve during the George W. Bush administration, was a central player throughout the financial crisis. He believed that there were no viable alternatives except immediate and unrestricted aid to Wall Street. He argued that, in a lesser crisis, the "irresponsible shouldn't be bailed out," but in what he called a "genuinely systemic crisis," the alternative of "letting major firms fail or forcing senior creditors to accept haircuts [take losses]—can pour gasoline on the fire," making the crisis even worse.[8] In testimony before the National Commission on the Causes of the Financial and Economic Crisis in the United States (usually referred to as the Financial Crisis Inquiry Commission, or FCIC) in 2010, Ben Bernanke, head of the Federal Reserve throughout the crisis, reiterated Geithner's view. The economy was dominated by large financial institutions that could not be allowed to fail:

> A too-big-to-fail firm is one whose size, complexity, interconnectedness, and critical functions are such that, should the firm go unexpectedly into liquidation, the rest of the financial system and the economy would face severe adverse consequences. Governments provide support to too-big-to-fail firms in a crisis not out of favoritism or particular concern for the management, owners, or creditors of the firm, but because they recognize that the consequences for the broader economy of allowing a disorderly failure greatly outweigh the costs of avoiding the failure in some way.[9]

Thus, according to Bernanke, regardless of Wall Street's culpability in causing the crisis, a rescue—with few if any restrictions—was necessary.

One of the factors that complicated a portrait of the scale of the bailout was that much of it took the form of loans and loan or investment guarantees. These programs do not necessarily show up as expenditures, so they are often seen as not "costing" the government any money. At the same time, many observers overlook those aspects of public policy that do not fit traditional categories of budgeting, such as tax expenditures (i.e., federal revenues foregone because of deductions, exemptions, and other tax breaks; see chapter 3), and, more importantly, do not fit the standard narrative of American exceptionalism and limited government. A 2011 Brookings Institution report on federal credit programs noted: "The federal government is the biggest and most influential financial institution in the world, a fact often hidden by the widespread public conception that the American government largely stays out of business activities." Even by narrow measurements, the US government provides more credit than any of the nation's largest private-sector banks. In surveying the scope of the bailout, Brookings estimated that "at its recent peak during the financial crisis the government controlled programs to lend or guarantee almost $10 trillion to the private sector."[10]

Few scholars have focused on the implications of loans and loan guarantee programs for a broader understanding of the role of the US government. Writing almost forty years ago, Theodore Lowi, a political scientist who stressed the significance of these types of programs, argued that federal credit programs were put in place to protect and subsidize institutions that were "large enough to be a significant factor in the community." He framed these policies in terms of the notion of "permanent receivership," analogous to a company being taken over during bankruptcy proceedings.[11] At the time, loan guarantee programs, minor in comparison with the trillions involved in the recent Wall Street bailout, showed that the federal government was active in providing financial support to key sectors of the economy. In essence, key markets were being managed. Nonetheless, Lowi's insight, however prescient, skirted over the reality that not all sectors are seen as equally significant, and thus do not receive the same attention from policy makers. In a market society, those who control access to credit are in a unique structural position over everyone else, since virtually all businesses and consumers depend on credit.

The History of the Credit State

For over one hundred years, federal loans, loan guarantees, and insurance programs have been an integral force in stabilizing and building the American economy. They are part of what sociologist Sarah Quinn labeled the "credit state": "programs and practices that tap the fiscal capacity and symbolic power of a government in an effort to direct and distribute credit for economic, social, and political purposes."[12] Working through private financial providers, these expressions of the state's infrastructual power supported and spurred particular economic activities. Quinn notes that most federal credit programs focused on five major areas: stimulating home ownership, expanding access to higher education, supporting farming, aiding business, and responding to financial crises. While there were short-term lending programs in the nineteenth century, the first long-term federal lending program was the 1916 Federal Farm Loan Act, which sought to expand the availability of credit to farmers.

The New Deal represented a watershed for the growth of federal credit programs. Even before Franklin Roosevelt was elected, Herbert Hoover had turned to a model from World War I, the War Finance Corporation, which had channeled over $71 million to war industries, in order to inject public money into collapsing ones. The Reconstruction Finance Corporation (RFC), formed in 1932, was an independent government corporation that received initial funding from the Department of the Treasury and borrowed additional funds from the public. Within its first six months of operation, the RFC lent over $1 billion to 4,000 banks, railroads, credit unions, and mortgage companies. By

1936, it had lent more than $8 billion to a broad range of ailing sectors of the economy, including loans to "banks, savings banks, credit unions, railroads, industrial banks, farmers, commercial businesses, federal land banks, production credit associations, farm cooperatives, mortgage loan companies, insurance companies, school districts, joint stock land banks, and livestock credit corporations."[13] By June 1935, the RFC owned over a third of the nation's banking capital. Together with other federal agencies, the RFC was involved in over half of the nation's farm loans by the end of the decade. Among their other benefits, RFC's loans and guarantees helped electrify 89 percent of the farms that had been without this form of power.

But this was not all. Loans became a central, but often unappreciated, aspect of the New Deal. The RFC provided loans to many New Deal agencies, such as the Public Works Administration, Home Owners Loan Corporation, Farm Credit Administration, Regional Agricultural Credit Corporation, Federal Farm Mortgage Corporation, Federal Housing Administration, Rural Electrification Administration, Resettlement Administration, Works Progress Administration, and Federal Home Loan banks.[14] Of the thirty-one major New Deal domestic programs, fifteen loaned or guaranteed loans to different sectors of society.[15]

Federal credit programs transformed the mortgage industry (and, indirectly, the home building industry) by providing federal support to lenders, including the Federal Housing Administration (FHA) and the Federal National Mortgage Association, familiarly known as Fannie Mae. The FHA, established in 1934, insured loans made by banks for building and buying homes. Previously, home loans were short term and required a large down payment. Full repayment of these loans often was due within five years. Federal mortgage insurance made it safe for banks to provide long-term, fixed-interest-rate loans, because they were guaranteed. Meanwhile, Fannie Mae, established in 1938, bought FHA-insured loans. (The Federal Home Loan Mortgage Corporation, known as Freddie Mac, was established in 1970. It buys mortgages, bundles them, and sells them to investors.) Both Fannie Mae and Freddie Mac were organized as government-sponsored enterprises (GSEs). A GSE is a private corporation, but one that has the implicit (although not explicit) backing of the federal government and thus can borrow money at low interest rates. (Fannie Mae and Freddie Mac would collapse in 2008 and be taken over by the federal government; see below.) Since its inception, the FHA, the world's largest mortgage insurer, has insured over 40 million homes. Meanwhile, veterans benefited from mortgage assistance beginning in 1944. Since that time, the Veterans Administration has insured over 18 million home loans (VHA loans).[16]

Expanding access to higher education has also been a federal goal achieved through its loan programs. The 1944 GI bill provided educational benefits to

7.8 million out of 16 million World War II veterans, but it was the Cold War that initiated the federal government's long-lasting role in making student loans and providing student loan guarantees. When the Soviet Union launched Sputnik, the first satellite to orbit the earth, in 1957, many feared that the United States had lost its edge in science and technology. In response, Congress passed the 1958 National Defense Education Act (NDEA), which provided direct loans, based on family income, to students studying science, mathematics, engineering, and modern foreign languages, with preference given to those who were interested in teaching. By 1964 (when the NDEA was amended and expanded), 600,000 students had received loans from the program. In 1965, the Guaranteed Student Loan program, which subsidized loans made by private lenders, opened eligibility for federally supported loans to all students, regardless of family income. If a guaranteed student loan was not paid back by the individual receiving it, the federal government paid the lender. With these guarantees in place, profits were automatic. The Obama administration abolished the program in 2010, arguing that it benefited bankers at the expense of taxpayers, but did not lower the overall cost of the loan to student borrowers. In its place, direct federal lending to students was expanded. The Congressional Budget Office estimated that the new direct lending program would have a net savings of $62 billion between 2010 and 2020.[17] In 2015, just over 60 percent of all full-time undergraduates received some form of federal financial aid, and half of all full-time undergraduates received a federal loan.

The first systematic accounting of federal credit programs, made in 1963 by the US House of Representatives, reported that there were seventy-four separate federal credit aid programs at the time, with fifty-one of these programs involving direct loans. Altogether, by June 1962 the federal government held $30 billion in assets and insured or guaranteed $70 billion in loans.

From the Credit State to the Bailout State

Bailouts of specific industries and companies facing economic hardship did not end with the New Deal. For example, between 1958 and 1973, there were 3,652 rescue operations for financially troubled defense contractors, and in 1976, McDonald-Douglas alone received $75 million.[18] The list of notable bailouts include the Penn Central Railroad (in 1970), where the Federal Reserve Bank of New York loaned over $500 million to the banks affected by the railroad's bankruptcy, after the railroad's request was rebuffed by Congress. The aerospace and aircraft company Lockheed received $250 million in loan guarantees from Congress in 1971. In 1980, Congress gave Chrysler $1.5 billion in loan guarantees. In 1984, Continental Illinois Bank, the seventh-largest bank at the

time, received $5.5 billion in new capital and an $8 billion loan from the Federal Deposit Insurance Corporation (FDIC), effectively nationalizing the bank before it was sold. In 1998, the Federal Reserve arranged for a $3.6 billion takeover of the Long Term Capital Management hedge fund. In 2001, the airline industry received $5 billion in cash and $10 billion in loan guarantees from Congress after 9/11. The 1980s bailout of the savings and loan industry, however, dwarfed each of these.

THE SAVINGS AND LOAN CRISIS

Deregulation, lax enforcement, reckless speculation, and outright fraud led to banking failures across the savings and loan industry. This industry, heavily regulated for thirty years (beginning with deposit insurance under the New Deal), took local deposits and made home loans to local residents. Interest rates were regulated, and residential mortgages were set at fixed rates. By the 1970s, the push for deregulation accelerated as these local banks came under increasing competitive pressure from other financial institutions. Congress loosened the rules governing the savings and loan industry, in part in response to the explosive inflation of the 1970s, which in some years reached double digits. High rates of inflation had pushed much of this industry into insolvency, since its loans were long term and were set at fixed rates. In 1981, for example, more than 80 percent of federally insured thrifts sustained net losses.[19]

During the Carter administration, the interest rate cap on deposits was lifted with the 1980 Depository Institutions Deregulation and Monetary Control Act. In addition, the cap on federal deposit insurance was raised from $40,000 to $100,000 per each individual account. The Reagan administration further loosened regulations on the industry with the 1982 Garn–St. Germain Depository Institutions Act, which allowed variable interest rates on mortgages. President Reagan compared this law to the Emancipation Proclamation.[20] Money flooded into the savings and loan industry as individual institutions sought to attract deposits by offering higher and higher interest rates.

Local S&Ls became market players like never before. They took on ever riskier investments in pursuit of even higher returns. Due to the tax advantages built into the Reagan administration's 1981 signature tax cut, commercial real estate boomed.[21] Buildings were flipped (bought and resold quickly), sometimes merely as paper transactions back and forth between banks, to make it appear as if prices were rising. When the building bubble burst, the worth of these investments plummeted. Despite the evidence that fraud was rampart, the Reagan administration "pressured banking agencies to reduce their examination staffs."[22] At the same time, to cover up the mounting losses within the

industry, the Reagan administration relaxed the regulatory standards for the safety and soundness of these institutions.[23]

As the industry spiraled out of control, over 1,000 (out of just over 3,000) S&Ls became insolvent. A national commission to examine the origins of the debacle spread the blame for the crisis. Criticism was directed at the deregulatory steps that allowed the industry to take on new investment powers with less supervision. The commission's report stated that "these government policies created powerful incentives and opportunities . . . for speculative, imprudent, and sometimes fraudulent activities." As the industry's problems grew, the report added, the entire Washington, DC, establishment looked the other way:

> Regulators, the Administration, and Congress must share the blame with the industry for the S&L debacle. Government policy makers . . . hoped the problem would go away. By allowing accounting schemes that made insolvent S&Ls look healthy, by virtually abolishing net worth requirements, and by not raising red flags, regulators permitted the powerful S&L lobby to convince the public and many in Congress that the situation was under control.[24]

The federal deposit insurance program that backed the savings and loan industry was quickly overwhelmed. In 1989, Congress allocated over $123.8 billion to pay for customers' deposits that were lost when various S&Ls folded. Since the money to cover this allocation was borrowed, the Government Accounting Office, an arm of Congress, estimated that the real cost of Congress's intervention was much higher—potentially hundreds of billions of dollars higher—due to the interest owed on the borrowed money. The widespread fraud that brought the savings and loan industry down resulted in over 1,000 felony convictions of industry officials, based on 30,000 criminal referrals made by regulators.

THE 2007–2009 ECONOMIC CRISIS

Despite the obvious lessons of the dangers of deregulation, Wall Street wasted little time in pushing to undo the centerpiece of the New Deal's regulatory structure for the financial industry. Banks and other mortgage lenders, among others, grew larger and more complex as regulatory barriers were removed. Regulators came to embrace the thinking of market fundamentalists, who argued that markets were driven by rational actors. Industry officials claimed that financial institutions would be careful not to expose themselves to undue risk, thus making close government regulation unnecessary. In addition, they maintained that individual investors would do the same, making government protection against unscrupulous lenders also unnecessary. Financial institutions were thus free to

expose themselves to even higher levels of risk by speculating with ever more esoteric investments. Regulators, under the sway of market fundamentalist thinking, left these new financial products largely untouched.

All of this proved to be a pipe dream. The 2007–2009 financial collapse shook the nation's financial system, threatened to undermine the entire global economy, and put in jeopardy many of the nation's largest banks, investment firms, insurers, and two of the three domestic automakers. As housing prices plummeted, well over twenty million homeowners (slightly more than 30 percent of all homeowners) found that they owed more than their homes were worth. In some local housing markets, the majority of homes were "underwater," where the mortgage debt exceeded a home's market value. Foreclosures spread throughout the nation. The worth of retirement accounts plunged, and the stock market lost almost half of its value, wiping out trillions of dollars in investors' accumulated wealth. The collapse in housing prices erased almost $9 trillion from a total residential real estate value of $24 trillion. At the same time, an additional $4 trillion was lost in pensions and other savings.[25] In 2010, Ben Bernanke, chairman of the Federal Reserve, testified to the Financial Crisis Inquiry Commission that the downturn was unprecedented: "As a scholar of the Great Depression, I honestly believe that September and October of 2008 was the worst financial crisis in global history, including the Great Depression. . . . Out of maybe 13 of the most important financial institutions in the United States, 12 were at risk of failure within a period of a week or two."[26]

The Wall Street collapse was particularly devastating for the entire nation, because the financial sector had come to dominate America's economy. With the decline of manufacturing, the US economy had become increasingly "financialized," that is, it was dominated by the finance industry to such an extent "that financial markets determine the state of the overall economy."[27] In the two decades before the Wall Street collapse, consumer debt skyrocketed, to make up for stagnant wages, thus enabling investors and speculators to soak up a larger share of the nation's wealth. In the seventy years before this crisis, the financial industry had accounted for between 10 and 20 percent of total profits, while in 2004, about 40 percent of all domestic corporate profits went to the financial sector. Complex financial instruments were developed and then bought, sold, and resold, allowing profits to be taken at each stage. Warnings that most of these financial instruments were risky investments, generating profits on what amounted to no more than gambling based upon faulty assumptions, were ignored.

Deregulation and the Roots of the Crisis

In a replay of the savings and loan debacle, but on an enormously larger scale, government deregulation, lax enforcement, reckless speculation, and fraud

were at the heart of the 2007–2009 financial crisis. Faith in the rationality of free markets, nurtured by years of lobbying and campaign contributions, blinded many policy makers to the perils of unleashing market forces. Compounding the perils of deregulation, technological advances in trading, new models of risk assessment, and the expansion of mortgage-backed securities, among other factors, also contributed to the speculative excesses that were out of control. Yet, in the end, as John Campbell argues, the proximate cause of the financial meltdown was deregulation.[28]

One of the policy changes that transformed the mortgage industry was the 1986 Tax Reform Act, which limited tax deductions for consumer interest payments. Previously, taxpayers who itemized deductions on their federal personal income tax forms could subtract from their taxable income the interest paid on any of their loans, including interest on credit cards, thereby lowering the taxes they owed. As a result of the 1986 act, only the interest on home mortgages remained deductible. This created an incentive for homeowners to take out second mortgages, in order to take advantage of this income tax deduction. Banks were quick to educate homeowners about this opportunity. When housing prices plummeted in 2007, more and more homeowners owed more than their homes were worth, in part due to this additional debt that they had taken on.

Of far greater significance was the repeal of key elements in the New Deal's Glass-Steagall Act, which was put in place to prevent the reckless speculation that had contributed to the Great Depression. After passage of the act in 1933, banks were banned from speculating with deposits, which became federally insured. In 1998, Citicorp had received a temporary waiver from the Federal Reserve that allowed it to merge with the Travelers Group, itself the result of mergers of insurance and securities firms. Now called Citigroup, or just Citi, it encompassed a bank, an insurance company, and various securities firms, forming the world's largest financial services company. The weight of consolidation within the industry, and continued lobbying and campaign contributions, led Congress to undo the Glass-Steagall Act with the 1999 Financial Services Modernization Act. Among other things, it ended the prohibition against financial institutions acting as a commercial bank (taking in deposits and making loans) while, at the same time, serving as an investment bank (raising capital and helping firms raise funds, as well as buying and selling securities).

Advocates claimed that the 1999 act would result in greater international competitiveness and market efficiencies. Critics at the time argued that allowing commercial banks, investment banks, securities companies, and insurance companies to merge would create firms that were too complex to manage, too big to fail, and would end up requiring massive government bailouts when they encountered trouble. No new regulatory architecture was put in place to

match the greater complexity of the resulting financial behemoths. As a result, no one agency was responsible for overseeing the overall behavior of these newly created firms.[29] With regulatory barriers falling, speculative excesses spiraled out of control.

Even regulations that still remained in place were loosened. For example, in 2004, the US Securities and Exchange Commission (SEC) reduced the reserve requirements for the largest investment banks (Bear Stearns, Goldman Sachs, Merrill Lynch, and Morgan Stanley). These firms were allowed to take on greater debt without having to increase their reserves. Each claimed that its risk management strategies were sufficient to protect it from any major losses.

The law also facilitated the growth of shadow banks.[30] These institutions did not accept deposits, so they were not subject to the same rules as commercial and investment banks regarding financial reserves. They did, however, act like banks in borrowing short-term funds and purchasing longer-term investments, such as mortgage-backed securities. But shadow banks, unlike the other banks, were not entitled to borrow funds from the Federal Reserve, and this made them more unstable. In addition, they were not subject to the same regulatory oversight as commercial and investment banks. By 2007, the scale of the shadow banking system was enormous. The five largest investment banks had combined assets of about $4 trillion, and hedge funds had $1.8 trillion in assets, while shadow banks' assets exceeded $10 trillion.[31]

At about the same time as the Glass-Steagall Act was being undone, the Clinton administration joined with Congress to block the chair of the Commodity Futures Trading Commission (CFTC), Brooksley E. Born, from regulating asset-backed derivatives. Created in 1974, the CFTC had its origins in 1920, with the first regulation of trading in commodity futures (the option to buy specific commodities at a future date at a set price). Born had argued that asset-backed derivatives, such as credit default swaps, should be regulated. (These are financial arrangements akin to insurance, where the buyer of the swap agrees to pay the seller in the event of a default on the security on which the swap was based.) Other derivative contracts simply called for paying off the holder of the contract at some future date, depending on any number of economic indicators, such as stock prices or interest rates. In essence they are bets, and often bets on bets. Born's efforts were rebuffed by top Clinton administration officials, including Robert Rubin, the secretary of the treasury, and Larry Summers, the assistant secretary, soon to succeed Rubin. And Congress stripped the CFTC's authority to regulate derivatives with the 2000 Commodity Futures Modernization Act. In the absence of regulation, derivatives boomed, facilitating the growth of mortgage-backed securities, since they provided the illusion of insurance against the risk of a mortgage meltdown. Yet, instead of acting as a counterweight to losses when mortgage-backed securities tanked,

derivatives amplified the crisis, because there were not sufficient funds to pay off the claims that were due. None of these problems were unforeseen at the time. Billionaire Warren Buffet, for example, acknowledged by many as being among the nation's shrewdest investors, warned in 2003 that "derivatives are financial weapons of mass destruction, carrying dangers that, while now latent, are potentially lethal."[32] The risks entailed in these financial instruments, he argued, were simply impossible to calculate and were "time bombs, both for the parties that deal in them and the economic system."[33] Needless to say, his warning was ignored.

In the years that followed, according to the Financial Crisis Inquiry Commission's report, the derivatives market "spiraled out of control." In 2003, when Buffet issued his warning, the notional value of derivatives (which is the *face value* of these contracts) was around $150 trillion; by 2008, it reached $673 trillion. During that same period, the gross market value (which measures the cost of *settling*—that is, paying out on—all existing contracts) went from $7 trillion to over $20 trillion. The failure to regulate derivatives was a "key turning point in the march to the financial crisis," the report concluded. The interconnection of derivative contracts among important financial institutions "escalated panic" and "amplified the losses from the collapse of the housing bubble."[34] Because of the deficient regulation of derivatives, the report concluded, "adequate information about the risks in this market was not available to market participants or government regulators."[35]

The last major feature of deregulation—or, more precisely, the lack of regulation—that contributed to the financial collapse involved the role of credit-rating agencies, which assessed the riskiness of financial instruments, such as mortgage-backed securities. By the 1990s, with the savings and loan industry weakened, Wall Street came to see the market in mortgages as an untapped profit source. Unlike traditional S&Ls, Wall Street did not hold on to mortgages, but instead packaged them into securities that were then sliced into tranches and sold to investors. The mortgage market mushroomed, going from $458 billion in 1990 to $4 trillion in 2003, with most of these mortgages packaged into securities that were then sold to investors.[36] Ratings by a third party were needed, so investors could understand the risks entailed in purchasing these securities, and such ratings often were required by law. Once again, what should have served as a brake on reckless speculation instead turned into a cover for fraud when the credit agencies inflated their ratings, in order to satisfy the originators of the mortgages. These originators *hired and paid* the rating agencies, with just three firms controlling virtually the entire market. The FCIC's report reached a damning conclusion: "The three credit-rating agencies were key enablers of the financial meltdown. The mortgage-related securities at the heart of the crisis could not have been marketed and sold without their seal of ap-

proval. . . . This crisis could not have happened without the rating agencies. Their ratings helped the market soar and their downgrades through 2007 and 2008 wreaked havoc across markets and firms." All too often, these agencies never saw the supporting documents on which the relevant mortgages were based, thus creating an incentive for mortgage originators to offer loans that otherwise would not have been viewed as sound. Loan documents were replete with false information, often without the knowledge of the buyer, so that loans could be made, and mortgage brokers could collect their fees. Loans extended without any documentation became known as "liar's loans"; others were labeled as "NINA loans"—buyers with no income, and no assets. Risky junk investments were dressed up as being safe, and all the rules of prudent lending faded. Each organization that had a hand in the process cashed in.

Fraud was rampant. In September 2008, *Bloomberg News* reported that the securities with the highest ratings "included $3.2 trillion of loans to homebuyers with bad credit and undocumented incomes between 2002 and 2007." The article stated that more than three-quarters of mortgage-backed securities "issued in the last two years and rated AAA [the top rating, equivalent to US government bonds]" were downgraded.[37] The FCIC's report asserted that the ratings agencies were well aware of the shady practices of turning suspect loans into top-rated securities. Greed drove the banks, mortgage lenders, rating agencies, and the like. Matt Taibbi, one of the journalists who revealed the inner workings of the industry, wrote that the documents exposed by the FCIC laid out "in detail the evolution of the industry-wide fraud that led to implosion of the world economy—how banks, hedge funds, mortgage lenders, and ratings agencies, working at an extraordinary level of cooperation, teamed up to disguise and then sell near-worthless loans as AAA securities."[38] Congress, in thrall to market fundamentalism and campaign contributions from the financial industry, had previously specifically barred the Securities and Exchange Commission from regulating the methodology used by the agencies issuing credit ratings for investments. Congress only called for more disclosure by these firms when it passed the 2006 Credit Rating Reform Act. It was too little, too late.

Lax enforcement was also widespread among the very institutions that should have been alert to the impending crisis. Congress and the George W. Bush administration resisted repeated calls to investigate Wall Street's reckless activities. In 2004, for example, the Republican-led Congress ignored testimony by the FBI that fraud within the mortgage industry was "pervasive and growing."[39] In the spring of 2008, as the crisis snowballed, the *New York Times* reported that the FBI "scaled back" a plan to investigate mortgage fraud. That summer, the Department of Justice rejected calls to create a task force to investigate mortgage-related crimes.[40] And in stark contrast to the S&L crisis, government regulators made no criminal referrals to the Department of Justice,

despite the fact that this subsequent crisis, according to William Black, a former savings and loan regulator, was seventy times larger in terms of losses and fraud.[41] He estimated that in 2006 alone, there were over 2 million fraudulent loans. Jed Rakoff, a senior judge for the US District Court for the Southern District of New York, writing in the *New York Review of Books*, pointed out that the final report of the Financial Crisis Inquiry Commission contained no fewer than 157 variants on the word *fraud* in describing what led to the economic collapse.[42] As legal scholar Arthur Wilmarth has concluded, "You had systematic fraud in the origination stage, then you had systematic fraud at the securitization stage, then you had systematic fraud at the foreclosure stage." He then asked, "At what point do we consider these institutions to have become effectively criminal enterprises?"[43]

Despite all this evidence, the Obama administration steered clear of bringing criminal charges against Wall Street's responsible parties, apparently because it feared such prosecutions would further destabilize the economy. Attorney General Eric Holder, testifying before the Senate Judiciary Committee in 2013, responded to a query about the idea of "too big to jail": "I am concerned that the size of some of these institutions becomes so large that it does become difficult for us to prosecute them when we are hit with indications that if we do prosecute—if we do bring a criminal charge—it will have a negative impact on the national economy, perhaps even the world economy. I think that is a function of the fact that some of these institutions have become too large."[44] Instead of criminal prosecutions, the Obama administration worked out fines against Wall Street's leading institutions. By mid-2015, US banks had paid over $200 billion in fines.[45] Although this amount seems large on the surface, between 2009 and the first quarter of 2014, the American banking industry alone earned $503 billion in profits, fueling charges that the fines amounted to little more than the cost of doing business.[46]

The Meltdown

Magnified by reckless speculation and widespread fraud in financial instruments, the catalyst for the financial crisis was the collapse in the housing market, which began in late 2006.[47] This market had become inflated, in part, because of low interest rates set by the Federal Reserve after 9/11, in the hope of stimulating economic activity. In response to low interest rates, there was a massive wave of mortgage refinancing. When the demand for mortgages and mortgage refinancing waned—there were only so many credit-worthy homebuyers—banks were more and more eager to lend money to subprime borrowers (those who did not meet traditional eligibility standards). By 2006, subprime borrowers accounted for 70 percent of the total mortgage market, compared with only 10 percent in 2001. With mortgages bundled into securities

and sold to other investors, the firms originating these mortgages faced little to no risk. They had already taken their share of the profits. Buyers of these securities were lulled into thinking that these were sound investments, due to their high scores by the credit-ratings agencies, or simply could not resist the profit stream that was available. When home prices started to fall, the entire house of cards collapsed. Defaults on loans spiked as many homeowners discovered that they owed more than their home was worth. Many simply defaulted on their mortgages and walked away from their homes.

The ramifications were felt throughout the financial industry, from banks, to mortgage lenders, to securities firms, to the insurance industry. First hit were mortgage companies, such as Countrywide, and the government-sponsored enterprises of Fannie Mae and Freddie Mac which had bought trillions of dollars in mortgage-backed securities. Banks and shadow banks were next, because they also held massive investments in these securities. When mortgages became delinquent, the revenue stream flowing to the holders of the securities dried up. Once this occurred, lending practices tightened, limiting the availability of credit, which further destabilized Wall Street.

The risk models used for these contracts, notwithstanding their apparently high degree of sophistication, never considered the possibility of a nationwide collapse of the housing market. As a result, there were insufficient funds to pay the insurance claims on the losses that were mounting. Insurance giants, such as the American Insurance Group (AIG), could not meet their obligations, further destabilizing the financial system. With panic setting in, no one knew which investments were at risk or which insurance claims were sound. Credit became harder and harder to obtain. Commercial paper (a short-term loan used by businesses to meet their day-to-day obligations) became nearly impossible to obtain.

The bursting of the housing bubble triggered a full-blown financial panic. Reckless lending, overleveraged shadow banks, and complex financial instruments, such as credit default swaps and collateralized debt obligations, interacted to amplify the magnitude of the crisis. The final report of the Financial Crisis Inquiry Commission emphasized that the crisis was avoidable. It focused on eight major findings:

- Widespread failures in financial regulation and supervision proved to be devastating to the stability of financial markets.
- Dramatic failures in corporate governance and risk management at many systemically important financial institutions were a key cause of this crisis.
- A combination of excessive borrowing, risky investments, and lack of transparency put the financial system on a collision course with crisis.

- Government was ill prepared for the crisis, and its inconsistent response added to the uncertainty and panic in the financial markets.
- There was a systemic breakdown in accountability and ethics.
- Collapsing mortgage-lending standards and the mortgage securitization pipeline lit and spread the flame of contagion and crisis.
- Over-the-counter derivatives contributed significantly to this crisis.
- Failures of credit-rating agencies were essential cogs in the wheel of financial destruction.[48]

At the same time, the US Senate's Permanent Subcommittee on Investigations issued a bipartisan report in April 2011, finding that the financial crisis was "the result of high risk, complex financial products; undisclosed conflicts of interest; and the failures of regulators, the credit-rating agencies, and the market itself to rein in the excess of Wall Street."[49] In other words, the nation's financial elites, along with key regulatory officials, were responsible for the financial crisis.

Due to the magnitude of the crisis, a government bailout was the only option to prevent an even deeper economic collapse. Wall Street was well positioned to ensure that its specific needs were understood in Washington, DC. It was second to none in spending money to gain political influence. According to the Center for Responsive Politics, in every election for the past several decades, Wall Street's campaign contributions to federal candidates topped those from all other sectors. Between 1998 and 2008, for example, the financial sector spent more than $5 billion to influence federal policy: $1.7 billion in campaign contributions to federal candidates, and $3.4 billion on lobbying.[50] In 2007, as the crisis was unfolding, there were almost 3,000 registered lobbyists working for the financial industry, with over half of them being former government officials. Its leading executives go back and forth between industry and top government jobs. Regardless of whether the Democrats or the Republicans were in the White House, top Wall Street executives served at the highest levels of power. For example, Bill Clinton appointed Robert Rubin, then CEO of Goldman Sachs, to be secretary of the treasury. (When Rubin left that position, he returned to Wall Street and became a top official at Citigroup.) Subsequently, George W. Bush appointed Hank Paulson, then head of Goldman Sachs, as secretary. In 2013, President Obama's appointee was Jacob Lew, a long-serving government official and former top executive at Citigroup from 2006 to 2008. While at Citi, Lew was the leading executive in the unit that, according to the *Washington Post*, "housed many of the banks' riskiest operations . . . [whose] massive losses drove Citigroup into the arms of the federal government."[51]

To the Rescue

Many of the details of the bailout involve complex financial transactions that were opaque to all but financial industry insiders. It entailed a vast, coordinated, and convoluted set of initiatives. The full details of the Wall Street bailout are well beyond the scope of any one book chapter, but we present a summary here.

One of the first major steps taken by Congress to address the economic crisis was to rescue the housing-related government-sponsored enterprises. In July 2008, Congress established the Federal Housing Finance Administration (FHFA), with the power to take over Fannie Mae and Freddie Mac, the housing-related GSEs. With the collapse of the housing market and foreclosures rising, these GSEs, which held trillions of dollars in debt-related instruments, were on the verge of collapse. The massive losses each sustained turned their implicit guarantees, as government-sponsored enterprises, into a massive government rescue. In early September 2008, both were put into conservatorship by the newly created Federal Housing Finance Agency. The CEOs of each agency and their respective boards of directors were fired. Their problems were easy to see. Fannie Mae's mortgage-related assets and guarantees had grown from $1.3 trillion in 2000 to $3.1 trillion by 2009, while Freddie Mac's had expanded from $1 trillion to $2.2 trillion. In 2008, their combined losses came to almost $109 billion, more than their combined profits from 1971 to mid-2008. By the end of 2011, the Department of the Treasury had extended $185 billion to these two GSEs, in exchange for stock that has paid dividends back to the government. As of 2016, each remained under government control.

TARP

The collapse of the GSEs was only the beginning. Lehman Brothers, one of the nation's oldest investment firms and, at that time, the fourth-largest Wall Street investment house, filed for bankruptcy in September 2008, the largest bankruptcy in US history. News of Lehman's collapse rattled investors, causing the stock market to suffer its largest drop since 9/11. At this point, the crisis seemed unstoppable. As the tide of economic woes continued to rise, days later, Secretary of the Treasury Henry Paulson presented a Troubled Asset Relief Program bill to Congress, requesting authority to spend $700 billion to bail out the nation's financial industry. Observers were shocked at the scale of the request, which was more money than the annual budget for Social Security or for the Pentagon.

This bill, just three pages long, lacked any details, except one that immediately caught everyone's attention—a prohibition of any oversight by the courts or Congress. This version of the bill was defeated by a combination of

Republicans, upset about the expanding role of the federal government, and Democrats, opposed to its loose provisions that offered no accountability. The reaction from investors was immediate and unmistakable. The next day, the Dow Jones Industrial Average dropped over 777 points, the largest ever single-day point drop, wiping out $1.2 trillion in stock values. The business community mobilized to get Congress to reconsider. For example, the Business Roundtable, a peak lobbying group composed of the nation's top executives, was "deeply disappointed" at Congress' failure to pass the bill. "In this uncertain economic environment," the group stressed, "America needs legislation that will restore confidence in our financial markets."[52]

Two days later, as Congress took up a new version of the bill, this lobbying group reiterated what was at stake:

> The failure to pass emergency legislation to rescue the US financial system will put our entire economy at risk. The resulting turmoil in equity markets has already wiped out hundreds of billions of dollars in household wealth and the retirement savings of the American people. But the impact of this crisis extends well beyond the financial industry.
>
> As business leaders representing companies that generate more than $5 trillion of US GDP—more than one-third of the US economy—we are already seeing the damage spread to every sector of our economy. Credit is being shut off to both small businesses trying to meet payroll and families struggling to pay college tuition bills. Retail sales are declining each week as consumer confidence collapses. More business failures, job losses, and significantly higher unemployment loom on the horizon.[53]

The Business Roundtable was joined by the nation's leading business organizations, including the US Chamber of Commerce, the American Bankers Association, and the National Association of Realtors. For the moment, at least, the business community was united in calling for a massive government intervention in the nation's economy. Quickly, Congress passed a new, 169-page version of the bill, the 2008 Emergency Economic Stabilization Act. With the financial crisis accelerating, President George W. Bush signed the bill the same day.

The law's preamble was an explicit declaration concerning the central role of the government to save the economy from ruin by "providing stability to and preventing disruption in the economy and financial system." TARP, run by the Department of the Treasury, ended up allocating approximately $426 billion, far less than the $700 billion that Congress authorized. Initially, treasury officials claimed that TARP would be used to buy troubled mortgages from banks and modify them to help homeowners in distress. But this was not how the program was implemented. Instead of purchasing these "toxic assets," the

Department of the Treasury focused on direct injections of cash to the nation's leading banks. This switch outraged some Democrats in Congress, who claimed that they were lied to by Bush officials about how TARP would be implemented, in order to gain their votes in favor of the bill.[54] Department officials and others claimed that injecting capital into banks would restore confidence among investors and would lead to the resumption of lending. The nation's largest banks, such as the Bank of America and Citigroup, each received $50 billion, while JPMorgan Chase and Wells Fargo each received $25 billion. Yet the banks receiving this assistance were under no obligation to make new loans. Instead, they largely used the money to protect themselves against an uncertain economic situation. The bill had earmarked $50 billion for home mortgage modifications to aid distressed homeowners, but in 2010, this portion was cut to $30 billion. After four years, only $4 billion was spent on loan modifications and other help for homeowners. Overall, TARP left homeowners to fend for themselves, while banks were protected from the fallout of their decisions and the nation's economic collapse.

TARP organized its twelve programs into four broad groups: financial institution support programs; asset support programs; automotive industry support programs; and homeowner support programs. According to a summary by the Department of the Treasury, TARP funds were allocated as follows:

- Approximately $250 billion was committed to programs to stabilize banking institutions ($5 billion of which was ultimately cancelled).
- Approximately $27 billion was committed through programs to restart credit markets.
- Approximately $82 billion was committed to stabilize the US auto industry ($2 billion of which was ultimately cancelled).
- Approximately $70 billion was committed to stabilize AIG ($2 billion of which was ultimately cancelled).
- Approximately $46 billion was committed for programs to help struggling families avoid foreclosure, with these expenditures being made over time.

The Federal Deposit Insurance Corporation

Other federal agencies were also called upon to stave off a financial collapse. In October 2008, the FDIC took the *unprecedented* step of insuring the debt of major financial institutions through its Temporary Liquidity Guarantee Program. For a small fee, certain financial institutions could have their investments guaranteed by the FDIC. Previously, the FDIC had never insured anything other than bank deposits. Wall Street wasted little time in taking advantage of this program.

At its peak in May 2009, FDIC nonbank guarantees reached a total of $350 billion. Goldman Sachs was the first user, after having become a bank holding company three weeks earlier. Meanwhile, the FDIC also had to cover the deposits of 318 banks that failed between late 2008 and 2010. In October 2008, the FDIC, in an effort to provide a safe haven for investors fleeing the stock market, also raised the limit on federally guaranteed bank deposits from $100,000 to $250,000.

The Federal Reserve

The steps taken by the FDIC and the Department of the Treasury were minor, however, compared with the unprecedented actions taken by the Federal Reserve. The Fed, with its ability to literally print money and shape interest rates, was at center stage during the bailout. Yet, due to its hybrid public-private structure, its initiatives received less public attention. Unlike TARP, the Fed did not need congressional approval for anything it did, and it tried to keep the details of its actions out of the public eye. Only a Freedom of Information Act lawsuit and demands by Senator Bernie Sanders (I-VT) forced the Fed to divulge the details of its undertakings. The Fed justified the unprecedented measures it took by pointing to its authority under the Federal Reserve Act, Section 13(3), which gave it the power to act "under unusual and exigent circumstances." Such an open-ended grant of authority meant that the Fed could lend what it thought were necessary funds to *any* institution, not just banks. Although this authority was given to the Fed in 1932, it had not used that power since the Great Depression.

The Fed's unconventional bailout steps were structured through seventeen different programs, whose titles were as opaque as they were complex, including the Term Auction Facility, Central Bank Liquidity Swaps, the Primary Dealer Credit Facility, Maiden Lane, and the Term Security Lending Facility, each of which involved trillions of dollars of loans. Different criteria were used for loans by each program. James Felkerson has used the raw data released by the Fed to estimate that it had committed over $29 trillion between January 2007 and March 2012. (This estimate was derived by adding up each loan renewal, so that, as Felkerson explains, a $1 loan renewed each day for a year adds up to a $365 loan.) Another way to measure the extent of the Fed's commitment is to look at the peak amount it took onto its balance sheet (the net of its borrowing and lending). As the financial crisis accelerated in the fall of 2008, the Fed increased its holdings by 150 percent. By March 2012, it had increased its balance sheet from $900 billion in September 2008 to over $2.9 trillion.[55]

More than 400 different banks received aid from the Fed. The Fed also extended its help to both foreign central banks and banks headquartered in other countries, due to the interconnected nature of the global financial sys-

tem. The Fed's single largest program sought to shore up ten foreign central banks with $10 trillion in loans. The European Central Bank was the largest borrower, at $8 trillion. Excluding the Central Bank Liquidity Swap program, the largest recipients of aid from the Fed were Citigroup ($2.6 trillion), Merrill Lynch ($2.4 trillion), Morgan Stanley ($2.2 trillion), AIG ($1 trillion), and Barclays UK ($1 trillion).

The Fed's Maiden Lane program sought to save Bear Stearns, the smallest of the "Big Five" Wall Street investment firms. Because the largest component of its investments was in mortgage finance, as the value of its investment portfolio dropped, Bear Stearns was caught in a liquidity crisis, which meant that it could not pay its outstanding debts or borrow additional funds. Its collapse was imminent. In early March 2008, the Fed, the Department of the Treasury, the Securities and Exchange Commission, and other agencies tried to shore up the firm's situation with a short-term loan of $13 billion, to get it through the weekend. The Fed justified its actions by invoking the "unusual and exigent circumstances" clause. For the Fed, Bear Stearns was too financially interconnected to allow it to fail.[56] To prevent counterparty contagion (where the failure of one institution causes others to fail), the only long-term solution was to find a buyer for Bear Stearns. The only feasible buyer was JPMorgan Chase. JPMorgan, however, feared that Bear Stearns' $30 billion in mortgage-related assets were too risky, particularly at a time when the value of its own mortgage-related assets was falling. "In a remarkable swapping of roles," Alan Blinder, former vice chairman of the Federal Reserve, has written, "the Fed and the Treasury turned into a pair of investment banks, trying to broker a deal between two Wall Street firms: Bear Stearns, to which the Fed had just lent $13 billion, and JPMorgan Chase, which the Fed regulated."[57] Acting as the lender of last resort, and more, the Fed established a limited liability corporation, Maiden Lane, for the purpose of taking up Bear Stearns' assets. JPMorgan Chase agreed to assume the risk for the first billion dollars in losses from these assets, while the Fed agreed to pick up the remaining $29 billion. The newly established company purchased the assets with a loan from the Fed.

In addition to these explicit bailout programs, the Fed also used its traditional monetary power to shape interest rates as a way of supporting the financial system. The Fed, by lowering the interest rate it charges banks, can lower overall interest rates, and thus stimulate economic activity. Beginning in mid-2006, as the housing market faltered, the Fed began lowering interest rates from 5.25 to 0.25 percent by December 2008 (and kept it there until December 14, 2016). Thus borrowing money from the Fed became virtually free of any interest charges. Despite this easy-money policy, in 2009 the mortgage market almost came to a complete halt, as lenders worried about further losses. A safer way to make money was to borrow from the Fed, for almost no

interest, and lend it back to the federal government by buying US government bonds. For example, during one three-month period in early 2009, the Bank of America borrowed approximately $48 billion from the Fed, with an interest rate of between 0.24 and 0.5 percent, and bought $10 billion in government bonds that paid 3.5 percent interest. In the third quarter of 2009, the Bank of America borrowed an additional $2.9 billion from the Fed and bought $12 billion in government bonds that paid, on average, 3.2 percent interest. At the same time, JPMorgan Chase, in the first quarter of 2009, borrowed $29 billion at 0.3 percent interest and purchased $20 billion in government bonds that paid, on average, 2.1 percent interest.[58] None of these maneuvers show up in any accounting of the scope of the bailout, since they fall under the "normal" working of the banking system, yet they are hidden subsidies nonetheless.

JOINT PROGRAMS

The bailout also entailed unusual cooperation among federal agencies.

The American Insurance Group

One of the most controversial programs involved AIG. In terms of direct government aid, as opposed to investment and loan guarantees, the largest recipient was AIG. In 2007, it was the fifth-largest insurer in the world and had $110 billion in overall revenues. In the United States, it loomed even larger in certain segments of the insurance market. It ranked first in life insurance premiums and second in property/casualty premiums. AIG's financial trouble was primarily due to the credit protection it offered to other financial players, mostly through financial instruments such as credit default swaps. When the investments upon which these forms of insurance were based started failing, AIG could not pay the parties it had insured. It faced collapse. The federal government injected $184.6 billion into AIG from TARP and the Fed, once again invoking its emergency power to lend to an institution other than a bank in order to save the company. The Department of the Treasury eventually held a 92 percent ownership in AIG.

But more was at stake than just AIG. The firms that had used AIG to balance the risks they had taken on were also in jeopardy. Bailing out AIG essentially was a back-door bailout of some of the biggest Wall Street giants. For example, Goldman Sachs received $13 billion from AIG to cover AIG's outstanding obligations on insurance policies held by Goldman Sachs. While the portion of the money loaned to AIG by the Fed was paid back with interest, a portion of the funds from TARP was not. Overall, however, the AIG bailout generated $22.7 billion above the cash injection.

The Asset Guarantee Program

Even larger in scale than the AIG bailout was the Asset Guarantee Program run by the Department of the Treasury, the Fed, and the FDIC. It guaranteed investments held by just two companies: the Bank of America and Citigroup. Fearing that each of these firms was "too big to fail," and thus that their possible failure posed a systemic risk to the financial system, the three federal agencies agreed to share potential losses of these two companies. In the case of the Bank of America, the financial guarantees came to $118 billion; for Citigroup, they amounted to $301 billion. The final agreement for the Bank of America was never finalized, and in May 2009 the bank paid the government a termination fee. For Citi, the guarantee program ran through December 2009, although no claims on losses were ever made. (In April 2012, the government earned a "profit" of $2.76 billion from the stock it received in return for these guarantees.) Such guarantees sent a strong message to the global financial community that the US government stood behind the nation's largest firms and would protect them from failing.

The Auto Industry Bailout

The auto industry, long America's largest and most profitable industrial sector, teetered on the edge of insolvency as gas prices spiked, credit markets collapsed, and sales hit a twenty-six-year low. Once again, the federal government acted as the ultimate guarantor of the economy by bailing out both Chrysler and General Motors (GM). (The Ford Motor Company did all it could to avoid bankruptcy because the Ford family would have lost all its holdings.) Unlike the Wall Street bailout, the automotive bailout was not widely supported by the nation's business elites. Even the 2012 Republican nominee for president, Mitt Romney (whose father was a former auto industry CEO, as well as a former governor of Michigan), wrote a *New York Times* op-ed piece against federal aid for automakers, arguing that if the industry received such aid, "its demise will be virtually guaranteed."[59] Nevertheless, this bailout provided for enough time for each automaker to successfully reorganize its operations. GM's collapse was a shocking acknowledgment that one of the nation's most iconic corporations, and perhaps the most storied and dominant firm of the twentieth century, could only survive with the federal government's help.

In the fall of 2008, the House of Representatives, led by its Democratic majority, voted to aid the auto industry, but a Senate vote was blocked by a Republican filibuster. Republican opposition, according to the autoworkers' union and others, was a crude form of partisan payback, since that union had long been a stalwart supporter of the Democrats. With Chrysler and GM facing imminent collapse, and losing billions of dollars weekly, the outgoing George W. Bush

administration was unwilling to let them fold on its watch. It provided bridge loans, worth almost $20 billion, to Chrysler and GM from TARP, but it required each company to demonstrate how it would achieve "financial viability" by February. In announcing this help, President Bush acknowledged the dilemma he faced: "This is a difficult situation that involves fundamental questions about the proper role of government. On the one hand, government has a responsibility not to undermine the private enterprise system. On the other hand, government has a responsibility to safeguard the broader health and stability of our economy."

Shortly thereafter, newly inaugurated Barack Obama appointed a Presidential Task Force on the Auto Industry, to review the plans for this sector's long-term financial viability. Each company's initial plan was rejected, and bankruptcy was now the only option. With no private lenders willing to advance money to GM, the federal government became the lender of last resort. Steven Rattner, who previously was an investment banker and now was the head of the president's task force, described the bailout as the "largest government intervention in industrial America since World War II."[60] No company with the size and complexity of Chrysler or GM had ever gone through bankruptcy.

In upholding GM's plan for reorganization under the bankruptcy code, the judge in the case stressed that if GM went under, this would pose a systemic risk to the industry and would cause significant harm to the nation as a whole. He noted that the auto giant used approximately 11,500 suppliers, and over 600 of them received more than 30 percent of their revenue from GM. Thus a GM failure would also jeopardize these firms, many of which manufactured parts for foreign-owned automakers, putting these foreign automakers' US-based operations, which employed tens of thousands of American workers, at risk. In the end, the two American automakers received a total of over $80 billion in federal help, including the aid that went to each company's lending arms. In each case, the US government essentially took over the company. The head of GM was fired. The Presidential Task Force on the Auto Industry, with the president's formal approval, deemed Chrysler's prospects to be hopeless. It was given the option of finding a merger partner or going under. An alliance with Fiat was arranged, and the Italian automaker took over Chrysler.

There were also other programs to help the struggling auto industry. "Cash for clunkers" gave rebates to those who traded in an older, less efficient car for a new, more fuel-efficient vehicle. At this program's close, the Department of Transportation reported that 700,000 vehicles had been taken off the road, rebate applications from car buyers reached a total of $2.9 billion, and 42,000 jobs were saved or created. Another form of aid came in 2009, when several car manufacturers, as well as suppliers, took advantage of the Department of Energy's Advanced Technology Vehicle Manufacturing program. This program

was part of the 2007 Energy Independence and Security Act that, among other things, raised fuel economy standards. In 2009, almost $9 billion in loans from this program were made to a range of companies, including Ford, which received the largest share (over $5 billion), to aid in the development of fuel-efficient technology. While not originally intended to bail out the industry, these funds channeled additional cash to the ailing automakers.

Even the IRS provided aid to GM. It allowed the company to use $45 billion in tax credits, due to its losses, against the taxes it might owe for up to twenty years of future profits. In general, when a company loses money in one year, it can apply the losses to a subsequent year's profits to lower the taxes that would otherwise be due. In normal circumstances, a company that undergoes bankruptcy cannot carry these tax credits forward, since bankruptcy is seen as changing the control of the company. The IRS ruled that in the case of the TARP bailout, the company did not experience a change in control, and the new GM was therefore allowed to carry forward the tax benefits from the massive loses of the old GM.[61]

The US government had majority ownership of this company while it worked its way through reorganization. The Canadian government also extended $10.6 billion in aid to GM (including funds from the province of Ontario), while Chrysler received $3.8 billion. GM's reorganization wiped out its shareholders, led to the closing of thirteen US factories, and a reduction in US employment from 91,000 to 75,000 workers. Worldwide GM employment dropped from 243,000 to 209,000. Its Pontiac and Saturn divisions were discontinued; its Saab and Hummer divisions were sold; and almost 1,000 dealerships were terminated. By 2010, the new GM returned to profitability, albeit in smaller form. When the new GM had its initial public offering (IPO), where its stock could be sold to the public, the federal government started selling off its 60 percent ownership stake. By the end of 2014, the Department of the Treasury had sold its remaining shares and recouped all but $9.5 billion of its financial aid to GM.

THE AFTERMATH

In June 2009, President Obama proposed sweeping reforms of the financial industry with the Dodd-Frank Wall Street Reform and Consumer Protection Act. This 2,300-page act was heralded as the most sweeping reform of the financial industry since the Great Depression. Hundreds of new regulations were mandated, touching on virtually every financial regulatory agency. The legislation had three broad goals: (1) strengthening consumer borrowing protection through the establishment of a new agency, the Consumer Financial Protection Bureau; (2) regulating the trading in derivatives by having them traded

on public exchanges; and (3) making "too big to fail" financial entities less likely to fail by increasing regulatory oversight of the largest firms and raising reserve requirements. The law also required such firms to develop plans for an orderly liquidation in case of failure, and created a process for government to liquidate failing firms.[62]

Conclusion

Using the narrow measure of preventing another Great Depression, the Wall Street bailout was considered to be a success. The bailout was extraordinary evidence of the central importance of the American state to the functioning of the nation's economy, as well as the global economy. It was a demonstration of the fallacy of the claims about American exceptionalism—that the US state is weak, with limited power. The Wall Street bailout showed that the US state was the most powerful in the world, with the resources to act as a guarantor of the global financial system. No other nation, including the European Union, could come close. It also demonstrated, as John Campbell has argued, that so-called free markets are always embedded in political rules and regulations: "In the sense that the state was poised to intervene as the lender of last resort when the financial markets got into serious trouble, these markets were never free markets at all."[63] Government policies restructuring financial markets were a case study of Polanyi's double movement of laissez-faire and social protection. Deregulation and lax enforcement, guided by the ideology of market fundamentalism, was a recipe for catastrophe. It led to myriad interventions to mitigate the downturn, and then to new regulations to prevent another such disaster.

Today the financial industry is even more concentrated than it was before the crisis, with fewer firms dominating the industry. Its lobbyists continue to target financial regulations and seek to weaken enforcement. The vigor of regulators and the next financial crisis will determine how meaningful regulatory reform turns out to be, and if "too big to fail" is a permanent feature of the American political economy.

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The Global State

Few americans were aware of the controversies surrounding the global state until they were surprised by the large-scale protests that disrupted the 1999 meeting of the World Trade Organization (WTO) in Seattle. The anti-WTO coalition burst on the scene with surprising force, leading to the failure of the Seattle WTO talks. As a result, then-president Clinton was pressured to promote more openness and concern for environmental and labor issues within the WTO. The "teamster-turtle alliance" behind that protest referred to the new coalition between labor and environmental organizations. It demonstrated to observers how unified the anti-WTO and antiglobalization forces had become by that point. Globalization has gained newfound attention recently, with 2016 presidential candidates Bernie Sanders and Donald Trump having both targeted globalizing trade deals in their analyses of why the American economy has stopped working for so many Americans. The global state responsibilities of American government have come into sharper relief. The modern emergence of globalization is primarily a product of actions taken by US leaders, and these leaders often work in and through the three main institutions of the global state: the International Monetary Fund (IMF), the World Bank, and, more recently, the World Trade Organization (WTO). This chapter reviews these actions and institutions. It also discusses how, although these institutions are not formally part of the American governmental system, they are part of the responsibilities of the national government.

As Karl Polanyi understands, markets do not simply emerge and operate all on their own.[1] Markets require government action for their emergence and continued existence. The so-called free markets that emerged beginning in England in the nineteenth century depended on government enforcement for their success (see chapter 1). Markets require government in myriad ways: protecting the rights of private property, enforcing contracts, securing the rules of exchange, regulating money and debts, stipulating the rights of laborers, ensuring proper weights and measures, funding education and transportation, and much more. Polyani recognizes that the idea of stand-alone, self-regulating free markets is a myth, albeit one that has gained an incredible amount of ideological currency and weight, especially in the United States.

We start from Polanyi's premise in order to set the stage for our examination of the global state. The globalized marketplace we face today is in no way a logical consequence of a naturally developing free market. Rather, it is a product of actions taken by the United States, beginning in the wake of World War II. It is the result of political choices, and in this chapter we review and assess these choices as the proper foundation for comprehending globalization today. The US global state—that part of the American government concerned with the operations of a global economic order—remains the foundation for the globalizing markets that define the modern era.

The IMF and the World Bank—two of the pillars of the global economy—physically operate within the United States, in Washington DC, in close proximity to the organs of our national government. As Latin American writer Eduardo Galeano has noted, "The Monetary Fund is called International, just as the Bank is called World, but these twin brothers live, collect, and decide in Washington." US leaders spearheaded the formation of the IMF, the World Bank, and the WTO. The United States provides the largest single source of funding for their operations, as well as dominates these same operations through its voting strength and the predominance of its personnel within the institutions.[2]

Globalization means an increasingly open trading and investing system between nations. It is by no means simply a natural process of growing openness, however. Rather, the extent of this openness is always a political choice, managed through specific institutions. Since World War II, the United States has worked diligently to control the process of keeping the international trading system open in a way that reflects American interests. These interests reflect the preeminent economic position of the United States and its largest financial and industrial corporations. US leaders have managed the international trading system by controlling the process of institution building and policy making within the evolving system of global state institutions, thereby ensuring that the IMF, the World Bank, and the more recent WTO all reflect specific US goals.

Despite America's dominance within and through these institutions, a major part of the controversy surrounding their activities has to do with the issue of national sovereignty, especially the ability of global state institutions, such as the World Trade Organization, to rule against national regulatory standards. Critics are concerned about the way in which these institutions have propelled an assault against the environment and workers' rights, as well as an erosion of national sovereignty. This issue has created some unlikely allies, such as Ralph Nader, the progressive consumer advocate and sometime presidential candidate, and conservative activist and commentator Pat Buchanan, formerly a contender for the Republican nomination for president. Both Nader and Buchanan alerted their audiences to the fact that US dominance within these

three global institutions has specifically meant the dominance of multinational corporations, such as Boeing, Dow Chemical, and Union Carbide. These dominant US corporations are key proponents of a globalizing world economy to which national governments, including America's, must surrender their autonomy. Buchanan, during his presidential run in 2000, referred specifically to statements made by spokesmen for these three companies, concluding that "in any test of loyalties . . . the company comes first." Buchanan warned of an emergence of "transnational elites" (corporate, political, scholarly, and professional individuals) whose actions promote world government and the erosion of American national sovereignty. Nader analyzed economic globalization as a process that undermines national sovereignty—not, as Buchanan would have it, in the interest of some global form of government, but rather in the interest of multinational corporations. As Nader put it in his stump speech in 2000, the recent activities of the IMF, World Bank, and WTO do not promote free trade. Rather, their goal is "corporate-managed trade." And, Nader added, "Instead of government of, by, and for the people, we have a government of the Exxons, by the General Motors, and for the Duponts."[3]

Nader's and Buchanan's complaints about globalization were echoed and extended during the 2016 presidential campaign by Donald Trump and Bernie Sanders. In a June 2016 speech, Republican nominee Trump reiterated many of Buchanan's nationalist pronouncements about protecting the American economy and proclaimed: "Globalization has made the financial elite who donate to politicians very wealthy. But it has left millions of our workers with nothing but poverty and heartache." Democratic contender Bernie Sanders, whose popularity on this issue convinced presidential nominee Hillary Clinton to abandon her support for the blockbuster Trans-Pacific Partnership trade deal, argued in a *New York Times* editorial the very next day that the "increasingly globalized economy"—"an economic model developed by the economic elite to benefit the economic elite"—"is failing people everywhere."[4]

Is the issue as simple as these arguments about national sovereignty and elite corporate power? In some ways, it is. The protestors in Seattle brought needed attention to the current corporate dominance of globalization and the role of institutions like the WTO. This chapter, however, looks at the history of these institutions, in order to provide a broader perspective to the issue of globalization and the stewardship role that the United States played in bringing about the current system. Global state institutions were formed under the guidance of the US officials, but the original plan for these institutions was very different from the way they operate today.

To get at these issues, we need to begin with an understanding of the gold standard and the system that replaced it. The United States was only modestly involved in international trade leading up to World War II. The US economy

was relatively insulated and isolated from the rest of the global economy, due to its own immense, developing domestic economy and its large reserve of raw materials. It took the Great Depression and the vulnerability of the American economy to the 1930s global economic crisis (which hit the United States particularly hard) to prod US leaders to take a prominent role in establishing a set of global state institutions. As we show, these individuals, recognizing the now-dominant military, economic, and political position of the United States, led the way in creating these institutions.

The new system was specifically built to replace the gold standard, which had granted private investors and banks great influence over individual nations and the international economy. The monumental failures of the gold-based system precipitated a turn to greater government management of market forces and of powerful private-sector actors, such as international banks and large corporations. The new system embodied a degree of contradiction in this regard, however. The new government stewardship also reflected the demands of US leaders and, by extension, large American banks and corporations, because the United States' economic and military might kept the system functioning. As General Motors chairman Charles Wilson used to say, "What is good for General Motors is good for America."

Hence the degree of governmental authority within and over international market forces and actors was less than some had hoped, but it was still substantive. In the current phase of globalization, however, US leaders have sought to reduce the national governmental role, in order to re-empower international investors, international banks, and multinational or transnational corporations. The goal is not to simply reduce governmental power, but rather to reorient the use of this power, so it serves the needs of international investors and global firms, rather than the majority of each nation's citizens. Public power, it seems, must be made to support private corporate power. The United States is leading the charge toward this type of global trading system, and it is in response to this new face of globalization that serious concerns and protests have grown.

The Gold Standard and International Trade

The emergence of US global state responsibilities came about in response to the failed efforts to jump-start international trade in the wake of World War I. Attempts to revive world trade focused on reestablishing the gold standard. This had been the key tool in forging a modern world trading system, because it provided a solution to two major problems: dealing with a multitude of different currencies, and dealing with trade imbalances (where some nations sell more abroad than they buy, and vice versa). First, in a world of multiple na-

tions with different currencies, cross-border trade is only possible when different currencies can be easily exchanged with one another. (Buying a Nikon camera, for example, means that at some point, US dollars have to be exchanged for Japanese yen.) Gold provided an objective measure against which all currencies could be valued, and this standard made it easier for countries with different currencies to buy and sell from one another.

Second, the gold standard also helped produce balance within the international trading system, simply by requiring that all currencies be able to be converted into gold on demand. If one nation buys more (imports) than it sells abroad (exports), its international trade balance moves into deficit, meaning that it is sending more money abroad than it is earning back, creating a problem in the balance of payments (with some nations having a payments surplus, and others having a deficit). It was thought that this system would naturally right itself over time, since, as deficit nations lost their gold, they would suffer a declining money supply. Since all paper money had to be exchangeable for gold, as a country's gold supply dwindled, so, too, did its money supply. This, in turn, would depress domestic consumption and spending, thereby lowering prices. Surplus nations, with their expanding gold reserves, would experience a growing money supply, which would then translate into higher prices. As time went on, the system would balance itself. A deficit nation would recoup its gold, because its lower prices would attract the excess currency in the surplus nations.

But the gold standard system did not simply operate on some kind of automatic pilot. Governments actively intervened to lower demand at home, including by raising interest rates, deflating their currency by taking money out of circulation, reducing government spending, and inducing an economic slowdown (and, hence, increasing unemployment) by making it harder to borrow and spend money. The overall system also depended heavily on the willingness of Great Britain to use its military and economic might to underwrite expanding world trade. Under the gold standard, British currency—the pound sterling, at one time the world's strongest currency—was used as a de facto global currency. It became a stand-in for gold in helping to facilitate commercial transactions. That is, currencies could be valued in relation to the British pound, thereby dealing with the issue of monetary equivalencies. London, as Britain's financial center, acted as the world's banker, providing loans and credit that allowed countries experiencing trade deficits to weather short-term balance-of-payments crises, thereby helping to deal with the surplus/deficit problem.[5]

The gold standard seemed to provide an automatic and natural monetary mechanism to support and sustain international trade. Yet there were problems

with this system. Economic growth was strictly limited, and individual nations were tightly constrained in the types of policies they could pursue to stabilize their economies. On the one hand, the world's supply of money and credit was closely tied to the available gold supply, instead of, say, to population growth or technological innovations. If the world's supply of gold grew slowly, then the global economy would also be forced into a pattern of slow growth or economic contraction (deflation). On the other hand, those nations running a trade deficit—which is usually a sign of economic weakness—would be forced into painful choices. To restore its trade balance, a nation usually deflates its economy, either through budget cuts or by raising interest rates. These two options normally restrict economic growth, and thus limit the funds available to make purchases abroad. Either method is painful, because the resulting economic slowdown means lost jobs and lower income. And if many nations pursue this policy as a way of dealing with their trade imbalances, the result can be a global recession or depression. In both cases, the problem is the system's "bias toward economic contraction," a choice that, by keeping inflation to a bare minimum, frequently benefited the very wealthy (often creditors) at the expense of the vast majority (often debtors).[6]

Any nation could opt to resist the painful choices the system imposed by limiting the influence of the gold standard. This could be done through controls like import restrictions (tariffs, for example) and limits on the flow of money and credit in and out of the nation. These choices close a nation off from the pressures of international trade to varying degrees. But they can also invite retaliation from other nations, to the point of setting off damaging trade wars, or even lead to the total breakdown in international trade, as occurred during the Great Depression in the 1930s. To some extent, all nations limit their exposure to international markets. The ability to impose such limits, however, is often controlled by international agreements and enforcement mechanisms that restrict any one nation's ability to throw up barriers to the movement of goods and money. These are issues that directly relate to the US government's global state responsibilities. When America became the mightiest economic nation, it also became the global leader in promoting free trade and, thus, a leading advocate of new agreements and enforcement mechanisms.[7]

A Reluctant World Economic Leader

The US role as world economic leader began with World War I, a war that led to the United States' emergence as a creditor nation and to the demise of Britain's ability to sustain the gold standard. After the war, there was a concerted effort by political and economic leaders to revive the gold standard. These efforts continued until, by the early 1930s, the worldwide depression led every

nation to retreat from the convertibility of their currencies to gold. The postwar period was characterized by damaging levels of inflation, wildly fluctuating currency values, and economic instability. Britain, terribly weakened by the war, was now unable to play the role of world banker, as it once had, and the United States, as the ascendant economic power, was unwilling to shoulder this responsibility at that time.

The United States embraced its isolationism during the years after World War I, driven by industries seeking high tariffs as protection from foreign competition, and by a public grown cynical and angry by US participation in that war. With the emergence of large national corporations and consolidated banking operations, the United States began to export more heavily. Still, most businesses focused on the large US domestic market and continued to demand high tariffs. The United States thus remained economically isolationist and relatively unmindful of international economic realities until World War II.[8]

Because of these isolationist pressures, US policy making in the 1920s worsened economic conditions in Europe. America maintained its high tariffs and refused to inflate its economy in the face of huge gold inflows from Europe. The United States should have done so under the terms of the gold standard. This would have raised the cost of American goods in international trade, thereby both helping European economies compete with US goods and stabilizing world trade. The United States also insisted that its wartime loans to Britain and France be repaid, forcing those countries to impose and maintain a harsh system of reparations on Germany. US leaders patched over the resulting economic turmoil by essentially lending Germany the funds to pay reparations to Britain and France. This action, in turn, allowed these countries to send the funds, in a circular fashion, back to the United States, where they had originated.

But the complicated postwar maneuvering did not resolve the problems of increasing economic instability. Moreover, the continuing US insistence on retaining high tariff barriers helped snuff out a revival of world trade, as other nations responded by also raising their tariffs. When Wall Street's enormous speculative bubble burst with the Great Crash in October 1929, the reverberations shook the entire capitalist world. International credit dried up, and European nations quickly became unable to cover their existing debts. Bankers throughout the capitalist sector responded to the increasing global economic crisis in orthodox fashion, by raising interest rates (as called for under the gold standard). This only further restricted credit and economic activity, and it served to push the world even deeper into a financial depression. The devastating effect of these traditional cures would serve to severely undermine the legitimacy of traditional laissez-faire notions, which advocated a hands-off role for government's relation to the economy.[9]

Nations responded to the growing crisis in ways that put an end to efforts to restore the gold standard. Various countries began to distance their economies from the global economy. Instead, they started to construct a closed system of national capitalism, through which they could restart their economies by being insulated from international economic shocks. Germany led the way in this regard, but other nations followed suit, including the United States under Franklin Roosevelt. Countries also began to pursue what came to be referred to as beggar-thy-neighbor policies of higher tariffs and competitive currency devaluations. In this way, they hoped to entice foreign purchases of their goods by temporarily lowering the value of their currency and, thereby, the international cost of their goods, while also raising tariffs against the importation of foreign goods. The US Congress passed the 1930 Tariff Act, otherwise known as the Smoot-Hawley Act, raising tariffs to more than 50 percent on imported goods. Germany eventually closed itself off from the international economy and set up bilateral and tightly controlled economic trade relations with a few other nations surrounding its borders. Britain consolidated its "sterling area" (referring to the British currency at that time, the pound sterling), which consisted of those nations which formed the colonial dominion of Great Britain, including India, Egypt, Canada, and Australia. This resulted in a closed trading area that relied on the British pound for trading purposes.[10]

A New International Financial and Commercial Order

The drastic erosion of the international trading system worsened the economic depression of the 1930s. It was in the wake of this retreat from free international trade that the balance of forces in the United States began to shift in favor of a more active engagement with the world and US leadership in an open world trading system. This changeover began slowly, with the election of Franklin Roosevelt in 1932. Although Roosevelt wanted to insulate the US economy from global deflationist pressures, in order to facilitate his domestic recovery program, the newly ascendant Democrats—anchored by anti-tariff, agricultural state southerners—proved to be much less protectionist than the Republicans had been.

Cordell Hull, Roosevelt's secretary of state, had made his life's work the reduction of trade barriers. His influence grew over the decade of the 1930s, as other US leaders began to understand that the economic health of the nation depended on having access to international markets. US firms had made a leap into global markets with World War I, but this successful beginning had been derailed by the onset of the Depression. Roosevelt and the Democrats hoped to revive export trade as part of an economic recovery plan. Congress

passed a Reciprocal Trade Agreements Act in 1934 as a first step in reviving US exports. This act gave the president, for the first time, authority to negotiate reciprocal trade reductions with other nations without involving Congress. Although it was primarily intended to increase American exports, rather than imports, it proved to be an important first step on the road to US leadership of an open world trading system.[11]

Other small changes followed, but substantive shifts in the US position on world trade awaited the beginning of World War II. That war came to be seen by many US leaders as the result of the inability to deal with the economic problems created by World War I. The dual shock of the Japanese attack on Pearl Harbor and Nazi atrocities helped turn American public opinion from isolationism to a readiness to engage with international affairs. The decade of the Great Depression had also convinced US leaders that national governments had to play an activist role in stabilizing their economies. The juxtaposition of the ultimate instability and failure of the laissez-faire 1920s with the successes of government management of the economy during the wartime 1940s made the benefits of governmental intervention clear to many. US leaders were now convinced that America needed to embrace the global leadership role that it had shunned after World War I, a demurral that, they knew, had set the stage for a new global war. A slogan at the time—"If goods can't cross borders, soldiers will"—sums up their thinking. Multilateralism in trade would help prevent closed economic blocs that would inevitably come in conflict with one another. So economic planning for the postwar period was necessary, in order to forestall future wars. With America now the world's economic powerhouse, US leaders wanted an open world trading system because of its benefits to the nation's large corporations.[12]

American and British planners established the outlines of the postwar global economic order in July 1944, at the Bretton Woods conference in New Hampshire. The planning process had started shortly after the war began. It was led by American and British negotiators, who focused on the two main issues of an international economy: monetary policy, or the difficulties of controlling the convertibility of currencies to facilitate international trade; and commercial policy, or the difficulties related to national trade barriers. These planners, led by Harry Dexter White on the American side and John Maynard Keynes on the British, drew lessons from the interwar period. They were convinced that any new international system had to jettison—and provide an alternative to—the gold-standard system. Such a system tightly constricted economic growth and restricted national efforts to make private markets work for the benefit of the broad majority of citizens.

KEYNESIANISM

Keynes's economic theory responded to the economic problems of the Great Depression and the related failure of traditional free market theory. Classical economic theory predicts that in times of economic recession, the government must retrench its spending and balance its budgets, in order to loosen up investment capital for the free market. But Keynes's theory shows how capitalists, in times of economic recession, are often so driven by fear of poor returns that they refuse to invest, even when they have the capital to do so. Keynesianism acknowledges that it often becomes necessary for governments to "prime the economic pump" through public spending on infrastructural projects, such as roads, schools, hospitals, and the like. This means government deficits, but it can also put people back to work immediately, both in trades (like construction) and in basic industries (such as steel and building materials). These workers would start spending their earnings, and this would have a ripple effect, with more hiring in industries that are providing consumer items. Pretty soon, growing consumer demand would finally encourage firms in the private market to begin to invest more themselves, creating a broader economic recovery and allowing government to finally reduce its deficit spending. Keynes's theory also shows that as private investment picks up, the threat of inflation grows, because investors throw caution to the wind in order to reap gains. The government can then step in again, this time to raise taxes to cool down the economy. This revenue can be used to pay off the accumulated government deficits. In this way, the government, through cycles of deficit spending and taxing (to head off inflation and pay down government debt), can manage to moderate the cycles of booms and busts inherent in capitalism.

Besides the immediate hiring that government deficit spending allows, Keynesianism recognizes the value in the infrastructural projects that such spending produces. The schools, roads, and the like would add to the productivity, efficiency, and viability of the domestic economy. Keynes's theory is "demand-side," in that it shows the value of a bottom-up, consumer-driven economy, in which income and wealth are more equally distributed than was historically realizable under capitalism. Moves toward greater equality and full employment in the postwar decades, made possible through deficit spending and government management of the economy, created a middle-class society that, in turn, would produce more stable economic growth than is possible through an unregulated free market.

The Bretton Woods planners were Keynesians (with the British led by Keynes himself), which meant they understood that national governments had an important role to play in stabilizing economies and providing for the fullest pos-

sible employment. Under the gold standard, such efforts were not possible. So any new system had to recognize that global economic stability required national efforts, in order to sustain full employment and curb market forces, in the interest of economic stability. The planners wanted nations to use government policy to control market forces and private business power, instead of the other way around, as well as to pursue a bias in favor of economic expansion and full employment. This is hardly surprising in the wake of a depression and a world war that had, for many, put the notion of self-regulating markets to rest and instead had demonstrated the value and effectiveness of governmental action.[13]

THE BRETTON WOODS PLAN

To achieve these goals, new institutions would have to be developed, similar to the proposed United Nations, but for the economic instead of the political realm. The preliminary Bretton Woods plan called for two agencies. First, an international central bank (which became the World Bank), to help with the reconstruction of war-torn economies and financial recovery, yet also supportive of national goals, such as full employment and domestic economic planning. Second, an International Monetary Fund, to harmonize the world's many currencies. This would essentially be an institutional replacement for the gold standard, to help restart and maintain world trade. The planners also saw the need for new rules for commercial and trade policies that would reduce tariffs and other trade barriers. This goal, however, was put off until World War II had ended. While an international bank represented the centerpiece of the group's early planning, there were doubts that the US Congress would agree to such an ambitious and powerful global state institution. As a result, efforts shifted to the second institution, the currency stabilization fund. (Postwar planners subsequently downplayed the role of a World Bank by having it focus primarily on European reconstruction.)

As the Bretton Woods participants focused on the problems of postwar monetary stability, they crafted a stabilization fund, consisting of a reserve of gold and world currencies. The fund would regulate member nations' currency values, to stabilize postwar international trade. But for this fund to work, countries would have to surrender some of their national sovereignty, since the ability to manipulate their exchange rates, as a way of boosting their exports, would be restricted. The fund would also help strengthen nations in their pursuit of full employment policies, by providing loans to cover temporary balance-of-payment problems. This would help nations keep their economies growing, whereas, under the gold standard, they would

have been forced into economic contraction (deflation), austerity, and rising unemployment.[14]

The Depression and war decades had dramatically altered the central premises of governmental policy making, making it possible and even imperative to think about governmental management and control of international economic stability. Still, the issue of such control over international markets raised controversial issues about both the extent to which individual nations would have to surrender their autonomy to international agencies, and the extent to which restrictions would be placed on private international banks and wealthy private investors. These were topics that concerned many in Congress and in the business community, especially among private international bankers, who feared the loss of their power and the inflationary potential of the IMF scheme. (Bankers are afraid of inflation, which eats into their investment income. For example, an 8 percent inflation rate cuts a 16 percent return from an investment in half, while allowing borrowers to repay loans with cheaper currency.) Harry Dexter White, the lead US negotiator, understood that he and Keynes were up against these sentiments. At the Bretton Woods meeting in 1944, White forced through many compromises to the original plans, to make them more palatable to a congressional majority worried about any surrender of US autonomy. In the end, these changes altered what the planners had hoped to achieve.

Advocates of a stronger set of international institutions were able to gain congressional acceptance of the IMF and the World Bank by imposing two restraints: limiting the powers of these agencies over private international and commercial bankers, and placing these agencies under the effective control (and even dominance) of the United States. Getting the new international institutions up and running meant gutting them of many of the powers needed to do the job they were supposed to do. As Robert Kuttner, echoing the sentiments of almost every observer, has noted, "The United States essentially ran the IMF [and] the World Bank." He states that the US Congress went along with the plan precisely because "the new institutions were well understood to be proxies for the United States."[15]

The Bretton Woods proposals covered many areas, including international trade and finance, and international development and investment. The goal was to achieve the fullest possible freedom in the international movement of goods and capital. This meant lowering tariffs and other trade barriers; eliminating private and bilateral side deals, both between nations and between firms; setting codes of trading conduct between nations; and establishing stable monetary exchange rates, supported by an international monetary reserve. The monetary reserve would be used to provide temporary help to nations with balance-of-payments problems, in order to prevent the competitive devalua-

tions of currencies and related trading problems that had marked the gold standard era. The new order would be based on international cooperation and new international institutions.

The International Monetary Fund

The first of these institutions was an International Monetary Fund, which would oversee and facilitate financial cooperation, in order to achieve the monetary stability integral to successful world trade. The IMF would do this by managing a system of fixed exchange rates, in which all currencies were fixed in value against the US dollar, and the dollar, in turn, was fixed in price against gold. So gold was retained to anchor the system, but only one currency, the US dollar, could be converted into gold, and then only at a set price ($35 per ounce). Any changes in the relative value of national currencies would be handled cooperatively through the IMF, instead of through the competitive devaluations of currencies that had undermined world trade during the 1930s. To maintain stable currency values, nations imposed controls on the movement of private capital, in order to restrict private international banks and multinational firms from engaging in a speculative financial trading of currencies. Imposing capital controls meant shifting the balance of power between private finance (banks and speculators) and national governments. Restricting private speculation allowed governments to have greater control over investment capital, in the interest of national and international economic stability.[16]

The system was also fashioned to support an expanding global economy, the opposite of the deflationary bias of the gold standard system. The IMF did this through its monetary reserves, which came from member nations, based on the size of their economy. The size of an individual nation's contribution (called a quota) determined the size of that country's bloc of votes in the IMF. (The United States contributed the largest amount of funds and, thereby, with its huge bloc of votes, enjoyed what was essentially a veto over the IMF's actions.) These reserves allowed the IMF to make loans to those nations that ran into balance-of-payments problems. Under the gold standard, these nations would have had to rein in their economic activity (to bring their exports and imports into balance) or deflate their currency (to make imports more expensive and exports cheaper). Either alternative threatened global trade and undermined global economic growth. Under this new system, the IMF would step in with temporary loans to keep each nation's economy growing, thereby contributing to a healthy and expanding global economy. If a nation's problems persisted, the IMF could impose stabilization policies as a condition of receiving loans, or the IMF itself could devalue that country's currency. (As we shall see, this ability to impose conditions on IMF loans would figure prominently

in the IMF's later development.)[17] Article I of the Articles of Agreement sets out the IMF's main responsibilities:

- promoting international monetary cooperation;
- facilitating the expansion and balanced growth of international trade;
- promoting exchange stability;
- assisting in the establishment of a multilateral system of payments; and
- making IMF resources available (under adequate safeguards) to members experiencing balance-of-payments difficulties.

The World Bank

A second institution, the International Bank of Reconstruction and Development (IBRD), more commonly known as the World Bank, was mostly an afterthought at the time, but it has become much more important over the decades. Originally positioned as an agency that would focus solely on reconstruction and economic development efforts in Europe, the organization would later become primarily focused on economic advancements in the developing regions of the world. The IBRD's role in European reconstruction was limited, as American pressure reduced the amount available for reconstruction purposes. Wall Street bankers ran the agency, tightly restricting loans by imposing rigid repayment conditions and requiring that loans not interfere or compete with private-sector operations.[18]

International Trade

Lastly, postwar planners wanted innovative trade arrangements that would complement the new financial order. Their goal was to create a set of binding trading rules to disallow the tariff wars and preferential trading agreements that had shut down world trade in the 1930s. They envisioned another organization, an International Trade Organization (ITO), to oversee these arrangements. US planners spearheaded these efforts, since the United States, producing an amazing 50 percent of the world's goods at that point, would be the prime beneficiary of these open trade rules. While the United States desired a reduction in tariffs to take effect as soon as possible, most other nations wanted to retain certain trade restrictions, as needed, to protect domestic full employment and their recovering economies. At the first postwar meeting on these matters, held in Geneva, Switzerland, in 1947, an interim document, the General Agreement on Tariffs and Trade (GATT), was drafted, laying out certain general principles and some modest tariff reductions. Negotiators deferred the toughest issues until the next year's meeting in Havana, Cuba.

Because most nations disagreed with the United States and wanted to allow certain temporary tariffs to protect vulnerable economies, the resulting Havana

ITO agreement—signed by the representatives of fifty-three nations, "virtually the whole world outside of the Communist bloc"—reflected this sentiment. The agreement could not, however, make it through the US Congress, now dominated by Republicans, who were opposed to the concessions made to other nations and to the nominal relinquishing of sovereignty to an international trade organization. Without US ratification, the ITO died, and the prior GATT agreement became the de facto framework for trade rules and all future trade negotiations.[19]

While Congress never ratified this GATT agreement, the document nonetheless became the basis for the management of postwar world trade. It served as a forum for multilateral negotiations on tariffs between member nations. A series of eight successive, large-scale, time-consuming negotiation rounds have been concluded, which have liberalized world trade by reducing tariffs and other mechanisms of trade discrimination. In addition, under GATT rules, the most-favored-nation principle would apply, where any concessions on tariffs between any set of member nations would automatically be extended to all other nations adhering to the GATT agreement. The GATT negotiations slowly but surely reduced national restrictions on the free flow of goods between member nations. The most recent round of trade negotiations resulted in the creation of a series of tough new rules and a new enforcement agency, the World Trade Organization (WTO).[20]

American Hegemony

Although it may have seemed that the US planners had prepared well for a restoration of global trade—instituting a workable international monetary system and a program for reconstructing war-torn economies in Europe, as well as easing trade barriers—enormous problems loomed. For one thing, due to a changing public mood in America, isolationist Republicans gained control of Congress in 1946, making it more difficult for US leaders to get popular and congressional acquiescence to continued US leadership in world affairs. Traditional American uneasiness toward foreign entanglements and a loss of national sovereignty had made it difficult for US leaders to support strong global institutions, and the IMF and the World Bank suffered, as their power and financial resources were tightly restricted.[21]

In addition, European economic conditions worsened almost at once in the immediate postwar period, in ways unforeseen by the Bretton Woods planners. Growing class conflicts, rapid inflation, and a slow economic recovery made it difficult to start Europe on the road to free and open international trade. As the economic situation worsened, many countries began to close off their economies through controls on the convertibility of their currency, controls on the

movement of capital between nations, and an increase in tariff barriers. With this alarming replay of the 1930s, business interests began to have grave concerns about the closing off of European markets to US firms, as well as the rise of state capitalism, and even socialism. As relations between the United States and the Soviet Union soured, there was fear that European nations might turn to the Soviets if US help was not forthcoming. The promise of a postwar multilateral global trading system had already been weakened, as the Soviets and many of their satellite countries declined to have anything to do with the IMF and World Bank. The United Nations quickly became divided into two hostile camps. The growing emergency more directly exposed the weaknesses in the Bretton Woods institutions. The IMF and World Bank became bystanders, while the very crisis they were designed to forestall gained momentum.[22]

It was at this point that a major change in US foreign policy occurred, one that relegated the IMF and the World Bank to a subordinate and minor role for the next ten years. In the face of the devastation in Europe, in 1947 President Truman proposed a massive reconstruction plan to Congress: the European Recovery Program, better known as the Marshall Plan (named after Truman's popular secretary of state, George Marshall). With 1948 being an election year, and Truman's approval ratings plummeting as the Republicans complained about wasteful foreign aid programs, chances grew dim for the plan to emerge from Congress unscathed. To get the bill through and start aid flowing to Europe, Truman and others in his administration exploited the growing US rift with the Soviet Union. Anticommunism would trump isolationism. The Truman administration warned that without the aid program, the Soviets would exploit growing economic difficulties in Europe and expand their influence, thereby threatening American interests. The Soviet and Eastern European economies were already closed off from the global trading system, and alarm arose over increasing Soviet influence and growing statist economic controls that, together, would cut US firms out of the European economy.[23]

Through the Marshall Plan, the United States, instead of the IMF, provided the liquidity (the funds, in the form of dollars) that allowed for the various European economies to cover the postwar payments deficit between themselves and the United States. Marshall Plan aid allowed Europe to continue to buy goods from US firms—European nations purchased seven times more than what they sold to the United States in 1948—purchases that otherwise would not have been possible, because of Europe's shortage of dollars to pay for the goods. This helped the US economy directly, as US firms continued to find markets for their goods in Europe. It also helped keep Europe open to future US private investment, instead of closed off as part of the Soviet orbit. US funding took the place of World Bank reconstruction funds, enabling European nations to weather their transition to economic health. For the most part, the IMF and

World Bank became subordinated to the new US hegemonic role. Marshall Plan aid to European recipients took the place of financial resources from the IMF, and the World Bank turned away from reconstruction efforts altogether, instead coming to focus on economic development programs for underdeveloped nations.[24]

Marshall Plan aid, which terminated in 1952, succeeded in stabilizing Europe economically. The United States then replaced this economic aid with a program of military aid. This continued to nourish Europe with the dollars required to maintain their purchases of US goods, until Europe was finally back on its feet economically by the mid-1950s. Marshall Plan aid was not simply a giveaway of US dollars. Instead, it provided US policy makers with a great deal of leverage to shape the economic policies within European nations. Moreover, most of the money was in the form of credits, used to buy goods from US producers. But US pressure for the liberalization of Europe's economies butted up against European fears that open trade, convertible currencies, and the free movement of capital would swamp their fragile economies with large trade deficits, high unemployment, and monetary instability.

European nations, as observers note, differed substantially from the United States, as these countries demanded a large degree of government intervention to stabilize their economies. US leaders, in consequence, promoted a revival of regional trade within Europe. They saw this as a first step in freeing up trade and preparing European economies for their eventual reemergence as players in the global economy. The envisioned trade revival included a reduction of trade barriers (such as tariffs) between the European recipients of Marshall Plan aid, and the creation of a mechanism to facilitate the convertibility of currencies within Europe (a European Payments Union, a mini-IMF just for Europe). The pressures of the Cold War—US competition with the Soviet Union for influence within Europe—forced US officials to accept a higher degree of government involvement in European economies than they otherwise would have been willing to accept. It also led them to allow high tariff barriers to protect European economies from lower-cost US goods during the transition period.[25]

Effects on Bretton Woods Institutions

Through their dominance within the IMF, US officials forced through a very restrictive interpretation of IMF lending and blocked Marshall Plan recipient nations from having access to IMF funding. The flow of US dollars through the Marshall Plan (over $12 billion through 1951), and, after that, through a huge program of military aid, took the place of IMF loans during the 1950s. (With the end of Marshall Plan aid, US military expenditures in Europe

ballooned from $576 million in 1949 to $2.615 billion in 1953, before finally peaking at $3.435 billion in 1958.) US aid helped Europe recover economically, so that by the late 1950s, convertibility between the dollar and European currencies finally became possible. It was then that the IMF finally came into its own as a manager of currency convertibility and supporter of international financial stability. Beginning in 1956, the IMF began to draw heavily on its reserves to help stabilize the world economy in the face of a series of economic crises. This was a moment of triumph for US policy, in the sense of its having restored liberal capitalism to Europe after the traumas of depression, fascism, and war. But the triumph proved to be short-lived, as the costs of this policy starting piling up by the early 1960s. Throughout the 1950s, despite its large trade surplus, the United States experienced a payments deficit with Europe and other nations, due to the amount of military and other aid America sent abroad.[26]

The price of US hegemony was exporting enough dollars through programs such as the Marshall Plan and military aid to ensure that Europe and other nations were able to grow their economies and participate fully in the global economy. By the late 1950s, the European economies recovered, and the prior dollar shortage began to turn into a dollar glut, where nations began to accumulate excess dollars from their trade transactions (about $3–$4 billion a year after 1958). Problems then started to mount for the United States, as some of these nations began to exchange their excess dollars for US gold reserves, which was their right under the Bretton Woods system. The dollar glut only worsened as European (especially German) and Japanese firms grew more competitive and gained global markets at the expense of US firms, leading to an increasingly slimmer trade surplus for the United States. (The US trade surplus would turn into a trade deficit by 1971.) Still, the European economic recovery did little to lessen the large flow of American political and military aid into the region. Cold War patterns of expenditures had taken on a life of their own. And the large outflow of dollars, combined with growing US domestic budget deficits and inflationary conditions associated with rising expenditures for the Vietnam War, also negatively affected the value of the dollar.[27]

The worsening state of the US dollar threatened the fixed-rate monetary system of the Bretton Woods agreement, as the subsequent gold drain from the United States increased rather dramatically throughout the 1960s. In addition, the overvalued dollar came under pressure from speculators who sold off dollars, betting that the official value could not be maintained. This forced the United States to sell off its gold to buy up some of the excess US dollars. Other nations, especially Germany and Japan, helped out by buying up excess dollars. These countries wanted to assist in sustaining the fixed-rate currency system, as well as protect the value of their own dollar reserves. The overvalued

dollar also helped keep their exports relatively cheap. Increasingly complicated arrangements were made to deal with the worsening situation, but these proved to be merely stopgap measures, since US leaders were unwilling to surrender American dominance of the international monetary system.[28]

The crisis peaked as the annual payments deficit doubled, from $3 billion (where it had been for almost twenty years) to $6 billion in 1969, before ballooning to almost $30 billion in 1971, a year in which the United States suffered its first trade deficit since World War I. At this point, there was simply not enough gold left in the United States to cover all the dollars in foreign hands. President Nixon finally responded by stopping the convertibility of dollars into gold in 1971, thereby ending the Bretton Woods system of fixed exchange rates. It was replaced by a floating exchange system, where the supply and demand of currencies in relation to one another determined their value. The value of currencies would no longer be determined by their relation to gold or any other fixed measure, but instead would simply float. Economically prominent nations, however, began intervening to control and manage the value of the dollar—the principal international currency—by the mid-1980s.[29]

US leaders preferred this post–Bretton Woods system, because it allowed them to continue to exercise dominance, despite America's growing economic weakness. The dollar continued to be the world's principal reserve currency, as well as the currency favored in financing commercial transactions. Moreover, the collapse of the international institutions and control mechanisms of the Bretton Woods system enabled private US international banks to move to the forefront of international finance. This shift increased the power of private banks and market forces within the international financial system—reversing the original Bretton Woods assumption that international political mechanisms needed to control private finance in the interest of national economic stability. Such a shift fundamentally altered how the IMF would pursue its stated goal of ensuring international monetary and financial stability.[30]

This new, emerging version of the IMF in the 1970s and 1980s thus came to reflect, to an even greater degree than before, the interests of US political and financial leaders. The United States had held the upper hand within the Bretton Woods system, but it had been somewhat constrained by the cooperative nature of the system and the presence of global rules. Later, its growing relative economic weaknesses had strengthened the hand of up-and-coming nations like Germany and Japan. When Nixon's action ended the Bretton Woods system, this made it clear that the United States would lead the system unilaterally, both through the dominance of the dollar as the world's key currency and the leading role of US commercial banks in international finance. The only way for the Bretton Woods institutions to survive would be to get on board with this new paradigm of overt American dominance.[31]

The "New" International Monetary Fund

The end of the Bretton Woods monetary system did not mean the end of the Bretton Woods institutions. During the 1970s, the IMF and the World Bank transformed themselves into institutions that became closely involved with lending to developing nations that were suffering under growing debt burdens. The IMF, especially, seemed to have been undercut by the end of the Bretton Woods monetary system. Yet an emerging international debt crisis would thrust new responsibilities on the IMF, ensuring that it, along with the World Bank and the new World Trade Organization, would remain as key institutions in creating and governing the increasingly globalized economy of the 1980s and 1990s.

One major factor in the IMF's transformation was the oil crisis of the early 1970s. On the one hand, oil-producing nations flooded large international banks, located mostly in the United States, with petrodollars (the dollars oil-producing nations earned from the dramatically higher price of oil). On the other hand, non-oil-producing, developing nations faced a huge payments problem, since they could not afford the rising oil prices. Large private banks, confronting the difficulty of what to do with the huge influx of petrodollars, found the answer in lending large amounts to the now-desperate developing nations. Much of this debt proved to be unsustainable and unpayable. As private banks began to withdraw from lending to these nations, the IMF stepped in, gaining "new prominence, with new functions and greater powers of control" over the increasingly debt-ridden developing nations of the world.[32]

The United States spearheaded the rise in contributions (quotas) to the IMF by member nations to increase lending to those countries experiencing debt problems associated with the oil crisis. In this process, the IMF transformed itself and found renewed relevance, shifting from a concern with managing exchange rates and international payments to a new emphasis, as the lender of last resort to hard-hit indebted nations. The IMF's lending focus went from developed nations needing temporary loans to developing nations desperate for longer-term loans. The IMF became an important player in the emerging international debt crisis of the 1980s as the large international commercial banks and the leading nation, the United States, realized that they needed the IMF to help secure repayment of their loans to the developing world. One of the IMF's central goals was (and still is) to help ensure the soundness of the international monetary and banking system. Thus, as the international debt problem—and, with it, the threat to international economic stability—increased, the IMF, as the lender of last resort to debtor nations, became more acquiescent to the demands of the international commercial banks, the largest of which are on Wall Street (Chase Manhattan, Citibank, and the Bank of

America). In so doing, the IMF weakened the powers of national governments over their economies, since the main interest of the United States and the powerful members of the international banking community was the servicing of bank debts.[33]

To secure these interests, the IMF increased its lending in a way that was designed to restructure the economy of recipient nations. It therefore became an instrument in spreading US influence around the globe. US leaders leaned heavily on the IMF to impose a free market, limited-government agenda through the harsh terms (the conditionality) of its loans to debtor nations. Most lending comes with some conditions, but the IMF instituted a rigid, one-size-fits-all stabilization program that ignored the unique circumstances of individual debtor nations. The rigidity of the conditions reflected an emerging new ideological bias that was opposed to governmental regulation of markets. As Nobel Prize–winning economist Joseph Stiglitz puts it: "[The IMF,] founded on the belief that markets often worked badly, now champions market supremacy with ideological fervor." Standard IMF loan conditions include the following:

- the abolition or liberalization of currency controls and import controls (tariffs);
- a devaluation of the national currency;
- an anti-inflationary domestic program, including higher interest rates, lower government spending, smaller subsidies, higher taxes, lower wages, and an end to price controls; and
- greater openness to foreign private investment (e.g., allowing foreign ownership of domestic companies).[34]

These conditions reflected the new "Washington consensus" that came to dominate IMF and World Bank policy making, starting in the early 1980s. Its basic tenets were fiscal austerity (cutting government budgets), privatization (selling off government-owned assets), and market liberalization (e.g., deregulating markets, ending price supports for basic goods, ending labor protections, and opening up the home market to foreign investors and firms). During the 1980s, the Reagan administration preached a rather extreme version of laissez-faire, free market ideology. That administration pressured both the IMF and the World Bank to adhere to a free market ideology by threatening the withdrawal of US financial support. It also badgered the two organizations to purge many individuals on their existing staffs, replacing them with free market ideologues. These actions had the effect of turning the IMF and the World Bank into "new missionary institutions, through which [free market] policies were pushed on the reluctant poor countries that often badly needed their loans and grants."[35]

These goals of austerity, privatization, and liberalization were designed to open up the economies of debtor nations to foreign investment. In addition, by reversing the Bretton Woods formula and promoting free market policies, the IMF was forcing the governments of nations receiving loans to forfeit their ability to stabilize domestic incomes and employment. The thinking was that this shift in IMF policy would encourage the inflow of foreign investment, which would prompt the development of new, export-oriented industries, leading to a basic reorientation and revitalization of the recipient nation's economy. But, as those who designed the Bretton Woods system knew all too well, these types of policies replicated the severity and punitive nature of the gold standard system, privileging wealthy international investors and creditors at the expense of a nation's domestic economy and of the majority of its citizens. This, however, was exactly the point. The Reagan administration was channeling the demands of major banks and multinational corporations by pressing for these policy changes.

Such policies promoted high interest rates and depressed economies. These results are great for international creditors and investors, because they are viewed as eventually pushing up the value of local currencies and producing trade surpluses, both of which help a nation pay off its international debt. Critics worry, however, because these policies also create unemployment, reduce incomes, and reduce productive investment in domestic-oriented industries, potentially leading to failed domestic businesses. They also leave the now-weakened debtor economies extremely vulnerable to the whims of international investors, who have pushed more of their money into speculations on currencies and other financial instruments and out of investments in basic industries and infrastructures. These investors also create instability by quickly moving their money into and out of countries, based on where they think they can reap the highest returns. Even free market advocates, such as Milton Friedman, have criticized the IMF for bailing out international investors when their investments in the developing world fail. They accuse the IMF of creating a "moral hazard" by promoting and encouraging increasingly "excessive risk taking and inefficient investment" in refusing to let doomed investment schemes fail. As the conservative American Enterprise Institute's Charles W. Calomiris writes, the "big winners" from this activity "are the wealthy, politically influential risk takers," while "the biggest losers are the taxpayers in countries like Mexico and Indonesia," not to mention those in the United States.[36]

One of the most influential critiques of the new IMF policies has been offered by Joseph Stiglitz, who served as chairman of the Council of Economic Advisors under President Bill Clinton. He also served as chief economist for the World Bank, a position that allowed him a clear view of the problems with the new policies of the two Bretton Woods institutions. Stiglitz has criticized the IMF as

arrogant and ideologically rigid, ignorant of the realities of many of the nations to which it makes loans, and colonial and imperial in its attitude toward these nations. The IMF had originally been designed to limit the power of private financial investors and insulate governments from private capital flows, while the new IMF basically reversed itself, to serve as an instrument of large, private commercial and investment banks.

As Stiglitz observes, the IMF's rigid anti-government ideological framework has proven to be devastating for many nations in the developing world, since they need the right kind of government support to make their markets work. Many of the problems in the developing world result from market failures, which are exacerbated by the IMF's terms. With the collapse of the Soviet Union, the IMF introduced its economic conditions to a large new area of the world, leading to nothing but a series of celebrated economic calamities. The IMF's pressure to end individual governments' controls on financial and capital flows encouraged currency speculations and short-term investment flows that allow worried investors to very quickly dump their investments in developing nations. The panicked selling of currencies and the hurried liquidation of East Asian investments in 1997 led to what was then "the greatest economic collapse since the Great Depression."[37]

Stiglitz has examined Ethiopia's experience with the IMF as an example of the problems he sees. In 1991, Ethiopia had just emerged from a bloody civil war, yet its leadership had made great strides in quickly establishing a stable economy and a democratic political structure. But in 1997, the IMF suspended its lending program to that country, despite the fact that Ethiopia's economy was growing steadily, with inflation under control. At stake not only was $127 million in IMF funding, but also the likely loss of contributions from other large donors, who usually follow the IMF's lead.

Stiglitz, working with the World Bank, arrived in Ethiopia in March 1997 and found that the nation's leadership was pursuing a rural development strategy to reduce poverty and had dramatically decreased its military spending. Stiglitz remarks that the country's economic results "could not have been better." The issue for the IMF was that too much of Ethiopia's budget consisted of foreign aid, which the organization thought should be used to build up the nation's foreign currency reserves, instead of to construct schools and health clinics. In the IMF's judgment, Ethiopia was in financially unsound condition, because it was spending more than it was taking in through domestic taxes, even though the contributions by foreign donors were explicitly intended to fund the school and health clinic projects. The IMF feared that if this foreign aid dried up, there would be no money to maintain the facilities, which would make them bad investments. But Stiglitz had his staff research the issue and easily unearthed the fact that the donors, recognizing this problem, had

built sustainable funding into the projects themselves. Stiglitz's staff discovered that, in general, foreign aid was more stable than that country's domestic tax revenues. They also found that the Ethiopian government realized that if it did not receive outside funds to build schools and clinics, it could certainly not build any more. Stiglitz and the Ethiopians were shocked to find that IMF officials could not see the logic of the situation, and were actually arguing that Ethiopia should *not* build schools and clinics for what were some of the world's poorest people, despite funding commitments by donor countries. IMF officials, caught within the organization's very restricted technical and ideological framework, could not exercise practical common sense.[38]

The "New" World Bank

These new policies, and both the IMF's and the World Bank's role in encouraging and enforcing them, became entrenched and formalized after the debt crisis came to a head in 1982, when Mexico and then Brazil announced that they would have to delay and even stop their debt repayments. A 1985 plan for dealing with the growing debt crisis was unveiled by James Baker III, Reagan's secretary of the treasury. The Baker Plan, conceived by administration officials and the leaders of the largest US banks, empowered the IMF and the World Bank—in cooperation with the large, private commercial lenders—to more aggressively make loans to indebted developing nations. These new loans would be conditional, however, on progress made under "structural adjustment programs" (SAPs) that forcefully insisted on adherence to the loan conditionality outlined above. When these programs did not produce the expected benefits—and actually led to greater indebtedness—another effort was tried. The Brady Plan (named for Nicholas Brady, who was secretary of the treasury at that time) encouraged banks to forgive some of the loans. Any debt reduction through this strictly voluntary program would, however, be contingent on the same SAPs that were part of the earlier plan.[39]

The Baker Plan reformulated the World Bank's mission and its relationship to the IMF, shifting the bank's emphasis from reducing poverty to one of working with the IMF to transform debtor economies through SAPs. The World Bank—officially the International Bank for Reconstruction and Development—had already shifted from its original mission, aiding the postwar reconstruction of European economies, to a concern with economic advancement in the developing regions of the world. The World Bank's early leadership was placed in the hands of Wall Street commercial and investment bankers. (Only two of the World Bank's presidents have not come from Wall Street.) They insisted on project lending (involving large-scale infrastructural projects, such as dams,

roads, and power plants), rather than program lending (focusing on educational, health, and smaller-scale economic programs).

The World Bank's attitude began to shift in the late 1950s, in response to Cold War rivalries between the United States and the Soviet Union with regard to the developing world. Lending began to flow more to poorer nations, with a greater emphasis on poverty alleviation, rather than on large-scale infrastructural projects. The International Development Association (IDA), established in 1960 as an adjunct to the World Bank, was a result of this changing focus toward development. The IDA was established to provide "soft" loans—long-term, low-interest loans—specifically for social programs (like education and health improvement) in the world's poorest nations.[40]

New leadership in the 1960s increasingly steered the World Bank into poverty-fighting activities in the developing world. First with George Woods (from 1963 to 1968) and then with Robert S. McNamara (from 1968 to 1981) at the helm, the bank's lending doubled and its staff levels tripled during the 1960s. McNamara (previously the president of the Ford Motor Company and then secretary of defense under the Kennedy and Johnson administrations), in particular, sought to transform the bank into a development agency focused on fighting poverty, with its new lending strategy directed toward improvements in the water supply, sanitation, education, nutrition, and agriculture. In the 1970s, the World Bank's program lending became focused on rural development schemes, but these often failed, because the bank neglected to take into account the fact that land in developing areas tended to be concentrated in a few hands. Because the bank was not prepared to confront the issues of power and corruption in the developing world, its programs were never as successful as was hoped. And program lending itself never went beyond one-third of the World Bank's total lending. Most of its loans still remained focused on large-scale infrastructural development projects.[41]

As the IMF began shifting its focus in the late 1970s in response to the oil crisis earlier in that decade, so, too, did the World Bank. The failures of the bank's rural development schemes, combined with a dramatic increase in debt levels and a general worsening of economic conditions in many recipient nations, led McNamara to propose that the World Bank use its loans as a way of inducing reforms in recipient nations, in order to curb corruption and inefficiencies. In this, the bank would "follow the lead of its more senior partner, the IMF." A division of labor thus emerged between the IMF and World Bank, in which the IMF engaged in short-term stabilization programs, while the bank engaged in longer-term structural adjustment lending. This dual approach emerged more forcefully when McNamara left the World Bank in 1981, and the Reagan administration pressed the bank to accept A. W. Clauson (formerly head of the

Bank of America) as its new president. The Reagan administration had little use for the bank, seeing "socialist tendencies" in its development work. Administration officials pressed the bank to purge its staff and reformulate its goals to better match the ongoing changes in the IMF. The World Bank and the IMF subsequently developed a partnership around the goal of using new loans to pressure debtor nations to restructure themselves according to the dictates of the Washington consensus.[42]

Later in the 1980s, the World Bank again began to focus on poverty reduction and program lending, in response to a growing chorus of criticisms from the many private nongovernmental organizations (NGOs), such as Oxfam and Africa Action, that supplemented the bank's work in the developing world. Not only did the World Bank (when under the stewardship of free market ideologues) help impose a radical, free market agenda that worsened conditions throughout the developing world, but it funded huge infrastructural projects with little public input—especially a dam project in India, and an invasive road project in Brazil—that threatened large-scale environmental destruction and massive human dislocations. The World Bank has been more aware of the public relations problems related to its work on SAPs than the IMF, because of its legacy of poverty-reduction work and the greater dispersal of its staff throughout the developing world. The bank has therefore seen more internal dissension and has worked harder to modify and reform its policies.

While some critics argue that these changes were mere window dressing, the World Bank, in direct response to NGO complaints, did implement a review process that involves NGOs in overseeing the results of structural adjustment lending. But, even as this process evolved, the bank's leaders grew increasingly hostile and distant about the many criticisms directed their way. For the NGOs, this was predictable, precisely because the bank's leaders had to ultimately answer to their primary audience, the "US Treasury and its financial-sector constituencies." As Joseph Stiglitz sadly explains: "We needed not just a vision of what a world without economic borders would look like, but a world in which there was more global social justice, in which our sense of caring went beyond our borders. . . . We did not see ourselves as having a moral obligation, we did not see the despair in these countries [forced into SAPs] as spilling out of their boundaries, making a global world that was less safe for us all; the only arguments that were admissible related to our immediate *economic* advantage." This was Keynes's point many decades before: markets are unstable—creating, in turn, bubbles and panics—and tend to produce serious inequities, because they are driven primarily by greed and profit considerations. For Keynes and his adherents, it is government's duty to impose and instill some measure of equity and stability through rules that rein in the freedom of market actors and serve the long-term interest of the larger community of citizens.[43]

The World Trade Organization

The World Trade Organization (WTO), created in 1995, emerged out of the Uruguay round of trade negotiations, held under the aegis of the General Agreement on Tariffs and Trade. But it was the December 1999 WTO meetings in Seattle that thrust the organization into the spotlight, as huge street protests disrupted the meetings and alerted Americans to the existence and activities of what has become a controversial organization.

As one prominent scholar observes, the WTO "is, in essence, an American creation." The Reagan administration had initiated the push to make use of GATT—the third and weakest of the Bretton Woods institutions—to create a more powerful international trade organization that would promote and enforce the same Washington consensus of privatization, deregulation, and optimum freedom for multinational corporations that had previously been pressed on the IMF and the World Bank. The United States, the prime sponsor of the WTO, also dominates it (and the IMF and World Bank), along with the European Union, Japan, and Canada. Representatives from these nations meet several times a year, and, in secrecy, determine the agenda and the preferred outcomes of the key trade issues to be discussed during international trade conferences. The problem of secrecy also clouds the way the WTO was established and the way in which trade disputes are handled, since there was and is very little openness in both cases. When rules are established outside of public purview and are implemented and enforced in a like manner, questions of accountability are magnified.[44]

The goal of the WTO, like that of GATT, is to ensure the freest possible climate for global trade, administer various trade agreements, and provide a forum for trade negotiations. The WTO provides something that GATT never did, however. It directly oversees and enforces trade agreements, and it has the power to settle trade disputes between governments. In this dispute resolution system, WTO member nations can bring complaints against other members. If subsequent negotiations fail to resolve the issue, a WTO enforcement panel rules on it as a court would, producing a decision in favor of either the plaintiff or the defendant. Except the proceedings of the WTO tribunals are secret, characterized by "a startling lack of transparency, public disclosure, or accountability," a fact that has generated intense criticism. WTO member nations can decide not to comply with the WTO's ruling, but they will then be subject to retaliation, in the form of trade sanctions or monetary damages. Underlining the American sponsorship of the new system and its new rules is the fact that the US government "has been the world's most active user of the new system—and the most successful." Between 1995 and 2001, the WTO decided 150 trade disputes. Of these, the United States brought fifty-seven cases, losing only three. Other nations

have won some high-profile decisions against the United States in cases involving environmental and food safety regulations (see examples below). But, for the most part, the costs involved in seeing a case through to the end discourage many poorer nations from being active participants in the system.[45]

While GATT, since its creation in 1948, has been concerned with reducing tariff barriers, the WTO was created to deal with non-tariff barriers: the entire panoply of domestic regulations, policies, and practices that can impact trade. Basically, the WTO seeks to eliminate national regulatory differences, in the interest of creating a "harmonized" global marketplace where multinational corporations will not have to deal with the complexity and costs of adhering to different national regulatory standards. What these corporations want are common rules for the entire global trading system. Ultimately, this means that governments must surrender a certain amount of regulatory authority in order to have a harmonized global trading system. As one study concludes, "The WTO agreements provide extensive lists of things that governments can no longer do." This is what many fear from such a system—that it is designed to privilege trade and profit over other values, such as public and environmental health, which government regulations have specifically emerged to deal with.[46]

WTO supporters see its activities as benefiting all member nations. They view the removal of trade restrictions as expanding trade flows, and thereby increasing jobs and income worldwide. The WTO website lists various benefits from its new system and rules, including the following:

- The system helps "promote international peace" by providing a process for resolving trade disputes, and by building international cooperation.
- Trade disputes are therefore also "handled more constructively."
- The system allows broadly based trade negotiations, making "life easier for all" and reducing the inequities between powerful and less powerful nations.
- The system produces freer trade, which "cuts the cost of living," "provides more choice of products," "raises incomes," "stimulates economic growth," and "makes life more efficient."
- The system protects governments from powerful domestic lobbying groups "by focusing on trade-offs that are made in the interest of everyone in the economy."
- The system "encourage[s] good government" by discouraging "unwise policies," thus providing "good discipline" that makes it easier for nations to attract business investment.[47]

Critics, however, argue that in this push to remake the international trading system, the WTO privileges commercial and profit-making criteria over non-commercial criteria, such as health, environmental, labor, and consumer stan-

dards. WTO rules treat products that have the same final physical form as "like" products that cannot be discriminated against, regardless of whether one nation decides that they were produced in a harmful way. One particular nation's standards about child labor or environmental sustainability, for example, cannot be used to discriminate against another member nation's goods, especially since such standards could be manipulated in the interest of simply protecting a nation's domestic industries. Developing nations—or, as many commentators note, the elites from developing nations—are especially adamant that the WTO not be used to impose the higher regulatory expenses of the developed world on them, thus depriving the developing world of their particular advantages (lower labor and regulatory costs) that attract foreign investment. This resistance weakens the WTO's ability to seriously integrate labor standards (e.g., child labor prohibitions, working conditions, pay standards) and environmental concerns, for example, into its management of trade disputes.[48]

This resistance from developing nations is supported by and is even a product of pressure from multinational corporations (MNCs) and investors, both on the lookout for lower-cost areas of the globe that could serve as sites to increase their profits. The conditions placed on many developing nations by the IMF and the World Bank have forced these countries to beg for whatever scraps the MNCs and international investors are willing to throw their way. At the same time, developed nations like the United States are the home of many of these MNCs, and US leaders promote American corporate interests as part of the country's national interest. Critics are obviously worried about the fact that public and environmental health concerns get caught in the middle, as both developed and developing nations seek to limit their application to international trade.[49]

In addition, the government of the United States, which is the most influential nation within the WTO, "systematically pushes for trade rules to trump environmental treaties." Scholars who have studied the WTO's record discovered that in cases involving a clash between free trade and environmental regulation, all but one was decided in favor of trade. (The one exception, involving the protection of sea turtles, was due to high levels of public protest.) Critics thus remain concerned that the WTO, by requiring that domestic regulations be designed and implemented in the "least trade restrictive" manner possible, produces a race to the bottom. Developed nations are increasingly forced to lower their health, safety, and environmental standards to meet inferior international standards, since nations now compete over reducing their labor and environmental protections to attract corporate investment.[50] In its findings (used, in the examples below, in the legal sense of a court ruling), the WTO has made several controversial decisions.

The WTO ruled against US clean air regulations: Domestic oil refineries were forced to invest billions of dollars to produce cleaner refined gasoline, in order to comply with 1990 amendments to the Clean Air Act. In 1996, in response to a challenge brought by Brazil and Venezuela, the WTO found that the Clean Air Act's requirements violated WTO's trade rules. The United States was instructed to lower its clean air standards or pay $150 million annually in fines.

The WTO ruled against a US dolphin-safe tuna law: Mexico challenged the 1988 US law (in amendments to the Marine Mammal Protection Act) prohibiting the sale of tuna caught with nets that killed large numbers of dolphins. A 1991 WTO decision found that this violated WTO's trade rules, and the United States changed its law to comply.

The WTO ruled against a US law protecting sea turtles: Provisions of the US Endangered Species Act disallowed the sale of shrimp caught without the use of devices to free sea turtles that were entrapped in the nets. A number of Asian nations brought a case against this law. A 1998 WTO decision found that the law violated WTO's trade rules.

The WTO ruled against a ban on artificial hormone–treated beef: In 1988, the European Union banned the sale of hormone-treated beef. In 1996, the United States, under pressure from the US Cattlemen's Association, challenged this policy before the WTO. A 1997 WTO decision found that the ban violated WTO's trade rules and allowed the United States and Canada to place high tariffs on European products until the European Union changed its policies.[51]

WTO's rules do allow member nations to adopt standards of their own choosing to fulfill legitimate health and safety objectives (through GATT's Article XX), but these rules weaken and even reverse the accepted prevailing standard (the precautionary principle) guiding public policy for health, safety, and related issues in many international treaties. The precautionary principle proposes that in cases of scientific uncertainty, regulatory standards should err on the side of health, safety, and environmental protection. The new WTO trade rules instead require governments to scientifically prove that a product or a process is harmful or dangerous before implementing trade-inhibiting regulation. The new WTO criteria mean that governments must err on the side of facilitating trade and profit making (thus allowing potentially dangerous products to be marketed) in the absence of a firm scientific consensus about a product's potential harm or threat. Critics worry about the impact of this shift, since, with the rapid emergence of new technologies, it is almost impossible to prove any harmful effects of new products until after the harm is done. This change is significant, since the WTO can rule on the legality of domestic regulations in the multiple sectors where justified concerns exist: the environment, public

health and safety, food safety, human rights, consumer rights, animal protection, and labor standards.[52]

The WTO's impact stretches even further. Under its General Agreement on Trade in Services (GATS), the WTO can force nations to open up to foreign competition such essential domestic services as the provision of water supplies, sanitation and sewage, electricity, transportation, health care, education, mail delivery, police and prisons, and other social services. In most cases, these services are supplied by the government, precisely because they are public goods necessary to the stability of any society. Private providers are never able to profitably guarantee universal access to these goods and services. (One example is private health care in the United States.) Private providers have shown that by privileging profits, the quality of their services has suffered greatly, such as the privatization of the rail system in Britain.[53]

In addition, the WTO, through its Trade Related Investment Measures (TRIMS) agreement, can overrule any domestic conditions on foreign investors (such as respect for labor or environmental standards). WTO's Financial Services Agreement (FSA) can overrule domestic regulations on banks, insurance and accounting companies, currency trading, and stock markets. The WTO can also, through its Trade Related Intellectual Property Rights (TRIPS) agreement, create and enforce new types of property rights, as well as require nations to respect a twenty-year monopoly for patents on a "vast array of items including plant varieties, seeds, and other things we do not ordinarily think of as private property." These agreements provide a firm basis for a radically new conception of business-government relations within both developed and developing nations. Corporations can use the WTO to overrule any nation's desire to control their behavior, thereby ensuring that market and profit values triumph over other considerations.[54]

In the end, the WTO agreements are expanding the power of dominant multinational corporations from countries like the United States, while reducing the sovereignty of all nations throughout the world. These policies benefit the affluent elite in both the United States and elsewhere, while undercutting the ability of developing nations to control their own development strategies, as well as eroding the ability of developed nations to regulate themselves as they see fit. Even free market economist and globalization supporter Jagdish Bhagwati, of Columbia University, has written that "the process of trade liberalization is becoming a sham," because its "ultimate objective" has become "the capture, reshaping, and distortion of the WTO in the image of American lobbying interests," in other words, powerful corporate interests. What scholars and observers find so disheartening about this process is that the nations with the most developed economies are precisely those that put to extensive

use governmental tools—such as tariffs, subsidies, investment controls, and regulatory authority—in achieving their gains.[55]

Conclusion

As Polanyi asserts, markets are political creations, in every case organized and enforced by political rules and actions. One type of global market was constructed in the wake of World War II, and this postwar development elevated the ability of democratically elected governments to limit the destructive behavior of profit-seeking banks and investors that had led to the Great Depression. But, beginning in the 1970s, this system became supplanted with a new one, which reduced governmental controls and unleashed private speculation in ways that dramatically subverted national and international economic stability. As US leaders became increasingly enthralled by a neoliberal ideology that, in many ways, demonized the role of government in market affairs, they utilized global state institutions to impose their vision on the world economy, reversing the government controls on private speculation that were enshrined with the original Bretton Woods system.

In the immediate postwar period, fears about a return to Depression conditions and the inherent instability of unrestrained market forces led US leaders to create a system that allowed a great degree of governmental responsibility for the international trading system. Goals such as stable employment were, for the first time, elevated as a top concern and became the basis for a new system of international economic cooperation. The Bretton Woods institutions—the IMF, the World Bank, and even GATT—were designed to enhance and reinforce the ability of a cooperating international system of governments to control private international investment in the interest of the broader public good. This changed when these institutions were reoriented during the 1970s and 1980s to serve the very different goals of reducing and restricting domestic governmental power and responsibility over national economies.

The gold standard reflected and reinforced the power and position of the wealthy. So, too, does the current neoliberal Washington consensus, returning global markets to an era of dominance by private investors, the same situation that produced the massive inequality and global economic instability of the pre–World War II period. The issue here is power, not simply the role of government. Bretton Woods enshrined a governmental check on the destructive behavior of private banks and investors. The current system, instead of simply encouraging less government intervention, utilizes a different kind of governmental enforcement scheme. It has reversed the previous power balance by privileging private decision makers, however irrational their goals, within global

markets. As Michael Mann understands, "Neoliberalism has a vision of capitalism freed from the state—economic dominating political power, the transnational dominating the national."[56] Such a vision still requires the exercise of governmental power in two dimensions. First, in some ways government authority increases in terms of, for example, national security (the military), domestic security (prisons, surveillance, and the like), and the enforcement of codes of morality, all to the delight of neoliberals and their conservative allies. Second, the neoliberal global order itself requires policing and regulatory enforcement, in order to keep nations from reviving national controls over private investment behavior.

The results of the original Bretton Woods system of financial controls and fixed exchange rates, which operated from 1945 to 1973, were impressive. The war-ravaged economies of Europe and Asia were resuscitated, and core developed nations enjoyed exceptional annual economic growth rates of over 4 percent. The developing world also made economic progress. From 1960 to 1980, right before US leaders promoted their Washington consensus, income in Latin America grew by 73 percent, and in Africa by over 34 percent. Since 1980, however, income in Latin America has grown by only 5.6 percent, while in Africa, income has fallen by 23 percent. The only rapid growth in the last thirty years has been in the emerging economies of Asia, and these gains have come about precisely because assertive central governments have used their authority to guide the process of economic development.[57]

The new global system, backed by the influential ideology of neoliberalism, which denounces governmental meddling in market affairs, traded in the stability of the Bretton Woods system for the promises of free trade and private initiative. This regime of financial liberalization has been accompanied by new technologies—which allow the instantaneous electronic transfer of the world's currencies, stocks, and bonds—and the growth of unregulated, offshore financial markets. With these changes, the power of private financial operators and speculators has grown enormously. This expansion of private power has led to a corresponding increase in the instability of the global financial system. The results leave much to be desired, as the annual growth rate for core developed nations has fallen by one-third, while international financial crises have increased dramatically.

Keynes thought it necessary to control floating—that is, the "hot" funds that large-scale investors and speculators rapidly move from place to place in search of quick profits—in order to protect productive investments and international economic stability. The IMF/World Bank system encourages just the opposite. Now, over a trillion dollars a day (most of it speculative) flows through the currency markets. Governments have essentially lost control of this process. They are also relinquishing their ability to decide domestic regulatory

issues. The WTO system challenges national sovereignty by reducing the scope and reach of governmental authority. In this way, both the IMF/World Bank and WTO systems increase the private power of financial speculators and multinational corporations and decrease the public power of individual nations. They are institutionalizing a global regime at odds with the original purpose of the Bretton Woods agreements.

Fears about national sovereignty are understandable in this setting. But it is also clear that while the United States promotes globalization aggressively, it is not doing so in the broader interest of its citizenry. As presidential candidates, both Donald Trump and Bernie Sanders made headlines by stating this very point. As Senator Sherrod Brown (D-OH), a participant in the congressional battles over these issues, has affirmed, "All international trade agreements [are] prejudiced toward capital—focusing on the rights of investors—and unconcerned about the rights of workers and the environment." Brown understands that to properly assess the global state institutions reviewed here, we have to question the type of rules under which we pursue global trade: "Do we allow unregulated international commerce with no democratic controls? What about the environment? What about worker rights?" Lastly, he asks, "Can we find ways to harmonize upward, so that food safety standards in the United States are not compromised, environmental standards in Germany are not weakened, and health and safety standards in Canada remain strong?" These questions distill down to whether the "dog" of the nation state and the domestic economy wags the "tail" of the international economy, or vice versa. The answer translates into whether governments will be allowed to control private market activity to protect the larger public interest.[58]

Notes

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14. Gardner, *Sterling-Dollar Diplomacy*, 83–90; Peek, *Unholy Trinity*, 42–46, 56, 111; Block, *Origins*, 42–46; Kuttner, *End of Laissez-Faire*, 36.

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Conclusion

The role of government has become very controversial in the United States. Many Americans misunderstand what government does generally and underappreciate the specific role that government plays in guaranteeing America's success as a nation. The US government has improved the lives of Americans in numerous ways. It provides income, food, education, housing, and health care supports for many, not just those in poverty. It ensures cleaner air, water, and food. It supplies the vast infrastructure (roads, bridges, sewage systems, etc.) on which economic growth depends. The government has stabilized the economic system through these activities and others, including the government's bailout of the largest banks and other institutions responsible for the 2008 economic meltdown. Without government action, that economic crisis would have led the world economy into a total collapse.

The government also engages in activities that trouble many Americans, including domestic surveillance and repression and the monitoring and control of behavior considered to be immoral. The government's national security policies have also spun out of democratic control on many occasions, leading the nation into unwanted and costly wars and interventions. What the government does, then, is a complex mix of activities that includes many things that Americans support wholeheartedly, and others that elicit concern and criticism. This has been one of our main points in this book. It is distracting and confusing to paint with a broad brush when speaking of "the government."

The Anti-Government Movement

Still, many conservative commentators and politicians promote simplistic anti-government attitudes, seeking to pit American citizens against their government—over which they still have many types of democratic checks—while remaining silent about growing private, corporate power. There has been a long-standing anti-government strain to American culture that has been easily manipulated into blaming government for many of the ills affecting the nation today. Americans actually embrace collectivist responses to the many problems they have faced over the course of the twentieth century and be-

yond, accepting the often generous government contributions to their own success, while at the same time believing in a libertarian individualism that assumes people are solely responsible for their fates, good or bad. Americans are thus vulnerable to simplistic arguments about their government, and easily distracted from the larger issues of power this book has raised.

Americans should be vigilant about possible abuses in the exercise of power. Differentiating among the government's many functions allows a clearer focus for such concerns, since not all government powers potentially directly threaten citizens. In addition, we have noted that concerns about the exercise of power should include both government and the business system, that is, both public and private power. The exercise of power is necessary and unavoidable in complex societies. Power is exercised in the public sector by government officials, and in the private sector by corporate executives. It is simply not true that only government exercises power. Nor is it true that the "free" market constitutes an arena free of power.

One difference between the two forms of power is that public power is more visible, acknowledged, and easily criticized, as we can see in the strong criticisms of governmental power prevalent today. This difference is understandable, to an extent, since government can more directly interfere with one's freedom. Still, for many, a person's life opportunities, and the greater part of an individual's working life, are controlled by business enterprises that are not directly accountable to the larger public. The irony in this hyperawareness of governmental power and lesser concern for private corporate power is that a key attribute of *public power* is its potential responsiveness and accountability to democratic majorities.

The exercise of public, governmental power is more scrutinized, and it is acceptable and expected that we criticize government, therefore making it more accountable. Governmental power is also just as necessary to our nation's success as is the economic system. It is not simply some contingent institutional force that can be done away with, in a spasm of anti-government rage. Both the government and the economic system are inexorably connected in such a way that each is dependent on the other, in necessary and unavoidable ways, for the other's achievements. There is no free market system without the use of government power. The so-called free market is simply not a freestanding entity, as many would have it.

This book, by detailing what the government actually does, has been geared to laying the groundwork for a healthier debate about the role of government in our lives. Everyone likes some parts of what government does while disliking other parts. But many politicians today have been selling a fantasy that government represents the main problem that stands in the way of greater happiness for most Americans, and that therefore we must reduce the role of

government to some bare minimum, or even eradicate it altogether. As Grover Norquist says: "I don't want to abolish government. I simply want to reduce it to the size where I can drag it into the bathroom and drown it in the bathtub."[1] Such a flippant statement may simply seem to be hyperbole, but we must remember the amount of influence Norquist has in the Republican Party today. Jeb Bush was the only 2016 Republican presidential candidate not to have signed Norquist's Taxpayer Protection Pledge, which obligates the signer to resist and vote against any and all tax increases.

Nearly 1,400 elected officials have signed the pledge, including essentially the entire Republican congressional delegation.[2] The antitax message is one of the most powerful trends in our current politics. It blames government for all our troubles and, as such, seeks to "starve the beast" so government cannot fulfill its functions capably any longer. Tax cuts are most often directed at the very wealthy, who thereby gain both more wealth and more political clout. First, this allows them to invest their savings in the rising amount of government debt (needed to replace the revenues lost to tax cuts), transforming these individuals' tax liabilities (income on which they otherwise would have to pay taxes) into an investment in government bonds, securities, and the like that pay them dividends. As Wolfgang Streeck discerns, "Not only is state poverty the investors' wealth; it offers them a golden outlet to invest their wealth profitably." Second, as major funders of the fiscal instruments that underwrite the government's debt, they become an important constituency of the modern state. In the eyes of government officials, the wealthy minority competes with and even shoulders aside popular majorities. As the government's debt accumulates, the creditors' claims on government officials often trump those of common citizens, magnifying what scholars see as the growing tensions between capitalism and democracy. As Streeck concludes: "The state as debt state serves to perpetuate [and deepen] patterns of social stratification and the social inequality built into them. At the same time, it subjects itself and its activity to the control of creditors in the shape of 'markets.' "[3]

Reductions in taxes deepen the amount of government debt and increase the leverage of the wealthy over any nation's politics. Such tax cuts also straightjacket government, reducing its ability to deliver the expected goods to popular majorities. Moreover, hikes in taxes and fees paid by the working classes are used to make up for tax reductions on the wealthy. Therefore, the more many Americans pay, the less they seem to get in return, fueling their increasing distrust and disgruntlement about the role of government in their lives.

As a result of this process, anti-government voices have become the loudest and most prevalent ones in our politics, so much so that it has become difficult for many Americans to have a rational and coherent understanding of how necessary and significant the government is to our nation's success. This book

has been about providing some of the tools, understanding, and historical knowledge for interested citizens to gain a clearer sense of what their government actually does, in order to combat the simplistic thinking that has come to dominate political debates. The need for such knowledge is manifest, especially at this point in our nation's history, when recent polls have demonstrated that the public's trust in government is at historic lows.

These polls, however, show something very different from a knee-jerk dislike of government. When asked about specifics, large majorities of Americans have positive views about much of what the government does, including ensuring that foods and medicines are safe, dealing with natural disasters, setting rules for workplace safety, preventing terrorist attacks, protecting the environment, ensuring access to health care and education, maintaining infrastructure, and strengthening the economy. Of the thirteen major government functions listed in the polls, Americans gave high marks to ten of them. And even the low marks involved Americans believing that more should be done with regard to ensuring a basic income for the elderly and helping people get out of poverty. Concerns about managing the immigration system received the lowest marks.[4]

Any government is multifaceted, engaging in many diverse and even contradictory functions. As a result, it is difficult to generalize when we speak of what the government does. It does many things, and, in this book, we have attempted to come to grips with the most significant functions of the US government. It is essentially meaningless to pronounce blanket statements about "the government," or "what the government does." We can only know our own government, or any government, through an understanding of its specific functions. The polls cited above demonstrate that Americans appreciate many of government's distinct functions, approving much of what the US government does, while retaining a generalized distrust of "the government" writ large.[5]

Tug-of-War Over Government

But the polls have also demonstrated that this distrust of government exists because many Americans perceive that it has become dominated by powerful private interests. Three-quarters of Americans agreed with the statement that government "is pretty much run by a few big interests looking out for themselves," rather than "run for the benefit of all the people."[6] Another way to read these polls, then, is to see that, according to Americans' own opinions, the government itself is not the problem. Rather, Americans are troubled by the increasing dominance of government by powerful interests. Most Americans feel locked out of the political process and from what their government does. This sentiment drove, in different ways, the 2016 presidential campaigns of both Donald Trump and Bernie Sanders, as the American public made it well known

that politics as usual would no longer suffice. Robert Reich, the secretary of labor under President Bill Clinton, toured America during the summer of 2015 and found that many Americans are seriously worried about their current and future security: "The anxious class feels vulnerable to forces over which they have no control. . . . Yet government can't be counted on to protect them. . . . They view government as not so much incompetent as not giving a damn. It's working for the big guys and fat cats—the crony capitalists who bankroll candidates and get special favors in return."[7]

Reich notes that the facts bear this sentiment out. A recent study by political scientists Martin Gilens and Benjamin Page reviewed 1,799 congressional policy decisions over the past twenty years and found that elite preferences won out over majority preferences in almost every case. As Gilens and Page conclude: "In the United States, our findings indicate, the majority does not rule—at least not in the causal sense of actually determining policy outcomes. When a majority of citizens disagrees with economic elites and/or with organized interests, they generally lose. Moreover . . . even when fairly large majorities of Americans favor policy change, they generally do not get it."[8] Americans are therefore responding rationally when they express a fundamental distrust of this situation. But the irony is that this new public sentiment is being exploited by these same powerful interests, who are driving a larger wedge between many Americans and their government. This actually exacerbates the situation we are faced with today.

Despite the growing intensity of the influence of businesses and elites over government in recent decades, government is the only game in town for most Americans. To oppose all of what a government does because of the growing power of business over that government makes little sense, since some of the functions of government *do* reflect the interests of the economic majority. It is crucial, therefore, to understand that the government does not simply reflect business power, though certainly the balance has tipped further that way in recent decades. As chapter one outlines, we can understand what government does in terms of the intersection of three general forces. First, we have government officials themselves, inhabiting a distinctive set of institutions and seeking to realize their own power-enhancing goals. Second, we have economic elites and powerful corporations, who exercise private power. They both compete with government and seek to capture governmental power for their own ends. Third, we have the economic majority, a democratic citizenry, for whom, in some important cases, expanding governmental intervention can be empowering and liberating. (Remembering, however, that in the past, democratic majorities have supported the repressive activities of the moral state.)

Each of these three forces are themselves quite often complex, differentiated, and sometimes even contradictory. (One example is when working-class

white Americans oppose welfare spending because they incorrectly believe that the recipients are primarily from minority groups. Another is when two different business groups are at odds over a particular government policy.) In any case, the resulting tug-of-war among the elite/corporate, citizen, and governmental forces influences much of what the government does. Again, we do not often find cases in which the government simply acts in its own interest (though we can probably see this most clearly for domestic and national security). The tug-of-war over government policy is a continuing one, and the outcomes of this often complex contest are seen in the very priorities of what government seeks to accomplish. We are now in a situation in which many Americans feel strongly that they are on the losing end of this tug-of-war, as they forfeit influence and power to a new oligarchy that exercises outsized leverage over what government does.

This contest gives increased meaning to the differences in the kinds of responsibilities and functions the government developed over time. It is difficult to lump together everything the government does, because of the complexity of its functions and the varying competing forces that influence its actions. Our government developed several necessary functions (ones that all governments have), but how it fulfills these functions in varying ways reflects this tug-of-war. The struggle over what government does gives fuller meaning to Michael Mann's understanding of the polymorphous nature of government. Some government functions, by their nature, more strictly embody independent governmental concerns; some more inherently serve the economic majority; and some reflect narrower, elite economic interests.

Welfare benefits programs are different from corporate subsidies, the making of national and domestic security policies, or battles over gay rights. National and domestic security policies can involve more-autonomous governmental concerns than welfare state policies or corporate subsidies, though each set of policies remains dependent, to varying degrees, on societal support for its success over time. In most cases, policy success depends on cultivating a strong set of relationships between government officials and influential societal forces. For example, where welfare state expansions have depended on mass public mobilizations pressuring government to act, national security state policies—although seemingly more autonomous—have emerged from a coalition of military officials and a new foreign policy elite, which includes top officials from the leading financial and industrial firms.

Certain functions of the government more directly reflect the interests of the economic majority and the larger community. We include in this category both the welfare state and the parts of the regulatory state that deal with worker and product safety, air and water pollution, the control of toxic wastes, and so on. Other functions of government reflect dominant elite interests in producing and

protecting increased profits. We include here the functions of the global state, and the bailout state, as well as some significant parts of the developmental state and regulatory state. (Even the national security and domestic security states produce profits and protect the economic status quo at home and abroad.)

Still other parts of the government more directly reflect the desire of government officials to expand their power and control over society. We include here the moral state, the domestic security state, and the national security state. But even in these cases, we can find close collaborations between government officials and elite interests (and, in the case of the moral state, pressure from majority opinion). A strong (and expensive) national security state, for example, secures markets abroad, safeguards American business interests within those markets, and underwrites the development of advanced-technology and other defense-related firms, while also providing a profitable domestic market for these products. The moral and domestic security states can enforce a conformity of opinion that stifles the challenges of the economic, racial, and sexual status quo. They can also serve to secure social control during turbulent, disordered times.

To the extent that a government pursues progressive taxation, it reflects the economic majority. By the same token, a government that cuts taxes on the wealthy and shifts the tax burden downward is responding to the wishes of organized, elite economic interests. We can see, then, an active tug-of-war between governmental and societal forces over which functions the government prioritizes over time, and even how these functions get defined and expressed as policy. Certain parts of the government certainly deserve as much distrust and vigilance as Americans can muster. But most of the anti-government rhetoric that reliably surfaces from many conservatives today focuses on the government's tax, welfare, and regulatory roles. (And, in some cases, the bailout and developmental functions—for example, the bailout of the auto industry and the need for a broad program of infrastructural investments.) The same conservatives lionize the moral, domestic security, and national security parts of what government does. Ironically, it is governmental powers within these areas that, as we have argued, should incur the greatest scrutiny by the American public. At the same time, polls show that Americans heartily approve of the government's welfare and regulatory operations and actually want the government to do more in these areas. They also would like the government to raise taxes on the wealthy, while they are at it.

Permanent Economic and Military Crises

Growth in the modern US government is the product of key turning points, beginning with the Progressive Era and ending with the Great Society of the

1960s. The major shift occurred during the 1930s and 1940s, when the Great Depression and World War II presented the American people with successive and massive economic and military crises. The Great Depression, by almost every account, did not end until the enormous expenditures for World War II led a dramatic revival and modernization of the American economy. In the postwar decades, the economy continued to be threatened by slumps and recessions. Even with government supports, it continued to underperform for many Americans, despite the flourishing of a thriving middle class for the first time in US history. And, as the recent crash in 2008 demonstrated, the United States remains subject to economic crises that necessitate enormous governmental interventions.

On the military side, the Cold War, itself a product of America's new global leadership, led to a militarization of national governance that only grew in importance in the postwar decades. The United States spurned a global leadership role in the decades leading up to World War II, but a new, internationally minded foreign policy elite—with close connections to some of the largest US banks and international corporations—fully espoused America's economic and military dominance in the postwar years. Military power was embraced by big business and conservative forces in ways that the welfare state never would be. So the growing governmental power poured into the national security state. From that point forward, national security threats remained central to American governance. Even after the collapse of the Soviet Union, the United States became embroiled in military conflicts that never allowed a full reconsideration of the very large, institutionalized military system at the heart of our national governance. The 9/11 attacks brought a new Cold War–like mentality to our nation, which only heightened the sense that we were faced with a permanent national security crisis.

Ascendant Neoliberalism

These economic and military crises remain with us, continuing to justify and underpin a persistently large role for government. Government grew to respond to these crises and, whether we like it or not, a return to the mythic, dreamy days of limited government seems well behind us. Yet conservatives today speak in terms of first rolling back the government expansions of the Great Society, and then reversing even those of the New Deal.[9] Many in the Republican Party would like nothing better than to reduce government to its basic policing and war functions, and little else.

Captured by a virulent version of neoliberalism—an ideology that celebrates the supposedly perfect outcomes of a free market system while demonizing government in many ways—Republicans have come to embrace an extreme

anti-government posture. Their presidential nominee, Donald Trump, tackled many of the sacred cows of Republicanism in 2016. But his message of a corrupt government of careerist politicians in bed with powerful special interests has only reinforced the anti-government attitude so prevalent in his party. The battle lines mapped out by the advocates of neoliberalism have been with us for decades now. If anything, they have hardened recently, especially in the face of a Democratic president, Barack Obama, who pursued an aggressive governmental response to the 2008 economic collapse. Nothing Trump did over the course of his candidacy would change his party's allegiance to this ideology.

Still, it is clear that neoliberal conservatives are not so much anti-government as they are antagonistic to, for example, certain welfare, regulatory, and tax policies that reflect non-elite demands. As Mann recognizes, "Neoliberalism has a vision of capitalism freed from the state." Yet, as he adds, its advocates pursue more government in certain ways: "Neoliberalism has . . . in practice been aligned with conservative politicians seeking to further the 'national interest' against other nations, and to enforce morality, big defense budgets, and zero-tolerance police and prison policies—all paradoxically characteristic of powerful states." Donald Trump has embodied this paradox by criticizing the role of government while, at the same time, advocating a robust use of state power to advance his agenda.[10]

Neoliberal anti-statism is thus less an attack on government per se than it is an attack on those parts of the government responsive to democratic majorities, a sector that has hindered a more full-fledged capitulation of government to market forces. As Karl Polanyi understands, elite business and conservative forces are continually pressing for the ability to run society as an adjunct to the market, thus allowing them to pursue maximum profits through a form of market fundamentalism that is destructive to workers, communities, and the environment. Underneath the veneer of this anti-government ideology, therefore, lies what many scholars have identified as a fundamental tension between democracy and capitalism. As Gilens and Page have found in their research, policy decisions most often reflected the wishes of the wealthy and powerful. As elite business forces have bent government policies to their liking, the American people have increasingly come to distrust government—which, ironically, is the only vehicle they have to realize their goals. As far back as 1957, during a period when it seemed as though the United States had successfully tackled issues of oligarchy, Robert Lynd recognized this reality, arguing that "the 'problem of democracy' as it exists in our society concerns principally the fact that purportedly democratic political institutions operate upon a factually undemocratic class base appropriate to capitalism." As he concluded then: "Indeed, one may suggest that under such circumstances the contest runs increasingly to the disadvantage of democracy. One should not be deceived about this by the

growth in the scope of governmental activity in the United States in the past quarter century."[11]

David Harvey captures what many Americans must suspect when he asserts that, with the progress of neoliberalism, "the boundary between the state and corporate power has become more and more porous. What remains of representative democracy is overwhelmed."[12] This presents the ultimate problem when confronting the issue of government today. Who does it work for? If many Americans believe that government officials are in it only for themselves, or think that the government works primarily for corporate and other elite interests, then the United States is at a tipping point. The craziness of the 2016 presidential process—with Donald Trump, a self-promoting huckster and political neophyte, gaining the Republican nomination, and Bernie Sanders, a self-proclaimed socialist, giving eventual Democratic nominee Hillary Clinton a run for her money—is an indicator that many Americans are ready and anxious to try anything to shake things up, come what may.

Our point is not that Americans should eschew a distrust and skepticism about government. We have mapped out (particularly in chapters 5, 6, 9, and 11) the ways in which distrust of and skepticism toward government are warranted and necessary. But a healthy distrust, and a desire to hold government accountable to the majority's interests, can turn to something darker. Americans are worried over their future and are beginning to seek scapegoats for their troubles. Such anxieties are already being exploited for political gain in the most recent political season. History has demonstrated time and again what can happen when a people begin to allow fear to overcome their more rational instincts. Americans' increasing distrust concerning their government, based on misconceptions and pressed by one of our major political parties, does not provide many optimistic future paths for our nation. This book has addressed, in a rational and descriptive way, what our government does, in what we hope is a first step away from a blind fear that ill serves us all.

Notes

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4. Samantha Smith, "6 Key Takeaways about How Americans View Their Government," *Fact Tank*, Pew Research Center, November 23, 2015, www.pewresearch.org/fact-tank/2015/11/23/6-key-takeaways-about-how-americans-view-their-government/.

5. Ibid.

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7. Robert Reich, "Trump Leads Revolt of Anxious Middle Class," *Hartford Courant*, December 16, 2015.

8. Martin Gilens and Benjamin I. Page, "Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens," *Perspectives on Politics* 12, no. 3 (September 2014): 576.

9. See, for example, John Daniel Davidson, "Beyond Obamacare, It's Time to Take on the Great Society," *Federalist*, August 15, 2014; Greg Sargent, "So Who Wants to Roll Back the New Deal?," *Washington Post*, August 31, 2015.

10. Michael Mann, *Globalizations, 1945–2011*, vol. 4 in *The Sources of Social Power* (New York: Cambridge University Press, 2013), quotes at 130, 131; see also David Harvey, *A Brief History of Neoliberalism* (New York: Oxford, 2005), 70–81.

11. Robert S. Lynd, "Power in American Society as Resource and Problem," in Arthur Kornhauser (ed.), *Problems of Power in American Democracy* (Detroit: Wayne State University Press, 1957), 41.

12. Harvey, *Neoliberalism*, 77–78.

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